United Nations S/2001/1282

Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Sri Lanka, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-72336 (E) 220102 190202

Annex

[Original: English]

Letter dated 26 December 2001 from the Permanent Representative of Sri Lanka to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have, in accordance with paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001, the honour to submit to the Counter-Terrorism Committee the report of the Government of Sri Lanka on implementation of the resolution (see enclosure).

(*Signed*) John **de Saram**
Ambassador
Permanent Representative

Enclosure

Report by Sri Lanka to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)

I. GENERAL

Pursuant to the United Nations Security Council Resolution 1373 (2001) which was adopted on 28th September, 2001 under Chapter VII of the United Nations Charter, Sri Lanka took immediate follow up action to frame Regulations under the United Nations Act No. 45 of 1968 of Sri Lanka **(vide appendix A)**, to give effect to the above Resolution.

The United Nations Act of Sri Lanka provides that if the Security Council of the United Nations, under Article 41 of the Charter of the United Nations, calls upon the Government of Sri Lanka to apply any measures necessary to give effect to any decision of that Council, the Minister in charge of the subject of Foreign Affairs may, by regulations, make such provisions as appear to him necessary or expedient to enable those measures to be effectively applied. These would include provision for trial, conviction and punishment of persons offending against such regulations.

Accordingly, the Minister of Foreign Affairs by Regulation dated 11th October, 2001 and published in the Government Gazette (Extra-ordinary No. 1206/14 dated 16th October, 2001), cited as the United Nations Regulation No. 1 of 2001 **(vide appendix B)**, made provision for giving legal effect in Sri Lanka to the terms of Security Council Resolution 1373 (2001).

In terms of this Regulation, any act which is directly or indirectly connected with the collection of funds or making available of such funds (for any terrorist organization), is made an offence under the law of Sri Lanka and any such funds or other financial assets are liable to be frozen with immediate effect.

Any person who contravenes these provisions shall be guilty of an offence under the Regulation and upon conviction by the High Court holden in Colombo, is liable to imprisonment of either description for a period not less than 5 years and not exceeding 10 years. (Clauses 6 and 7)

Upon the conviction of a person for an offence under this Regulation, any funds or other financial assets or resources of such persons shall, by reason of such conviction, be forfeited to the State. (Clause 8)

The provisions of Regulation No. 1 of 2001, further cast a duty upon any person who has knowledge or reasonable cause to believe that any person has committed an offence under the Regulation or is making preparations or attempting to commit an offence or has in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence, to report the same to a police officer. Any person who fails to so report commits an offence thereby and shall, on conviction by the High Court be liable to imprisonment of either description for a period not less than two years and not exceeding seven years.

The Regulation further provides for the appointment of a competent authority to monitor the implementation thereof. Accordingly, Mr. R.A.A. Ranaweera, Addl. Secretary, Ministry of Defence was appointed as the competent authority with effect from 8th November, 2001 for the purposes of this Regulation.

The Regulation also provides that the Minister of Foreign Affairs shall, on information received by him and in consultation with the Minister in charge of the subject of Defence, determine the organizations or persons in respect of whom the provisions of this Regulation should be enforced.

Accordingly, the Minister of Foreign Affairs has determined on 8th November, 2001 the designated persons and entities/organizations (for the purpose of Regulation No. 1 of 2001). These persons/entities/organizations are

those contained in the lists dated 8th March, 2001, 20th August, 2001 and 8th October, 2001 as identified by the Committee established by the United Nations Security Council. The list also includes The Liberation Tigers of Tamil Eelam (LTTE) which is proscribed in Sri Lanka as a terrorist organization and which is also designated as a terrorist organization in a number of foreign countries such as the US, UK, Canada and India.

Pursuant to Regulation No. 1 of 2001, the Central Bank of Sri Lanka has issued relevant circulars to all Commercial Banks and Specialized Banks, Authorized Money Changers, Travel Agents authorized to issue travellers cheques, Credit Card Companies, all persons authorized to engage in the money transfer business and all Finance Companies, containing instructions for strict compliance with Regulation No. 1 of 2001.

In terms of the Circular instructions issued by the Central Bank of Sri Lanka, banks and finance companies are required, inter-alia, not to open new accounts either in foreign currency or local currency, to freeze with immediate effect any accounts already opened and to refrain from making any payment in Sri Lanka or abroad, out of funds received from persons/organizations listed in Regulation No. 1 of 2001. Additionally, particulars such as the names and addresses of account holders, names of referees, nominees and of persons authorized to operate such accounts, including current balance, debits and credits since 1st January 2001, to such accounts had to be submitted by the stipulated date, ie. 23 November 2001.

Similarly, Circulars issued to authorized Money Changers, Travel Agents and persons authorised to engage in money transfer business require such persons to refrain from engaging in any transactions involving foreign exchange, with any of the persons/organizations listed in the Regulations. All Finance Companies have been similarly instructed not to accept new deposits, to refrain from effecting payment to or make any payment out of funds, received from persons/organizations listed in Regulation No. 1 of 2001.

The aforesaid persons and institutions have also been instructed, in terms of the relevant Circular, to report forthwith to certain named officials in the event of reasonable doubt as to whether any person/organization is linked to any of the persons or organizations listed.

II. RESPONSE TO QUESTIONNAIRE

Operative Paragraph 1

Sub Para (a) – A comprehensive law for the purpose of combating money laundering is in the process of being finalized. The draft legislation covers, inter-alia, any act which constitutes an offence under any law for the time being in force, relating to the prevention and suppression of terrorism, including any legislation to give effect to any international Convention for the suppression of terrorism, to which Sri Lanka is a State Party. The exchange control laws (Exchange Control Act No. 24 of 1953) and procedures which contain restrictions on certain payments without required permission, would supplement other laws that are in place to prevent the financing of terrorism.

Furthermore, Cabinet has approved the drafting of legislation to give effect to the International Convention for the Suppression of the Financing of Terrorism. This law would provide, inter-alia, for the creation of a substantive offence of financing terrorism. This legislation together with the draft legislation on money laundering is expected to be presented in Parliament on a priority basis.

Draft legislation to deal with organized crime is under consideration at present, including legislation to give effect to Sri Lanka's obligations under the Palermo Convention on Transnational Organized Crime.

In addition, the Suppression of Terrorist Bombings Act No. 11 of 1999 requires the Government of Sri Lanka to take appropriate measures to give effect in Sri Lanka, to the Convention for the Suppression of Terrorist Bombings (1999). Any person or group of persons committing or engaging, instigating, organizing or knowingly assisting in the commission of an offence under this Act, whether committed within or outside Sri Lanka, is guilty

of a criminal act in terms of the Act and upon conviction is liable to imprisonment for a term not less than 15 years and not exceeding 20 years.

At present, the provisions of the Prevention of Terrorism Act, No. 48 of 1979 (**vide appendix C**) read together with provisions of the Code of Criminal Procedure Act, No. 15 of 1979, provide the necessary substantive and procedural infrastructure to effectively investigate and prosecute offences of terrorism, including financing of terrorism committed within the territory of Sri Lanka. The Prevention of Terrorism Act enables effective prosecution of persons held responsible for major acts of terrorism, including murder, kidnapping, abduction, criminal intimidation, robbery, mischief and unlawful importation, manufacture, collection & possession of firearms and explosives.

Conspiracy to commit acts of terrorism and abetment to terrorism are also recognized as separate criminal offences. Further, failure to provide information regarding (a) preparation to commit acts of terrorism and (b) whereabouts of persons who may have been involved in the commissioning of terrorist acts, is recognized as a substantive criminal offence. This law provides criminal investigators with wide ranging powers (which are supplementary to investigative powers contained in the Code of Criminal Procedure Act), including extended periods for interrogation of suspects. Such interrogation is facilitated by detention in the custody of investigators, which is authorized by the issue of Detention Orders.

Sub Para (b) – In terms of UN Regulation No. 1 of 2001, no person shall make available any funds, financial assets or economic resources for the benefit of any organization or person who commits, attempts to commit, participates in or facilitates the commission of any terrorist act. Any person who violates these provisions would be liable to imprisonment upon conviction by the High Court for a period not less than 5 years and not exceeding 10 years. The Regulation also makes it an offence for the failure of any person to report information in his possession with regard to the movement or whereabouts of any person who has committed or is making preparations or is attempting to commit a terrorist offence. The penalty for such failure to report is imprisonment upon conviction by the High Court for a period not less than two years and not exceeding seven years.

It is further envisaged under the proposed Anti-Money Laundering legislation that a person committing an offence of money laundering shall, upon conviction after trial before the High Court, be liable to a fine not less than the value of the property in respect of which the offence is committed and no more than three times the value of the property in respect of which the offence is committed or rigorous imprisonment for a period not less than six years and not exceeding 15 years or to both such fine and imprisonment. The assets of a person found guilty shall also be forfeited.

Sub Paras (c) & (d) – Existing provision is contained in the United Nations Regulation No. 1 of 2001 in respect of the freezing and forfeiture of terrorist funds and financial assets. The money laundering legislation, once enacted, would also contain comprehensive provisions for freezing and forfeiture of such funds.

Section 124 of the Code of Criminal Procedure enables a magistrate to issue appropriate orders and processes of Court in order to assist in the investigation of criminal offences. This provision, read together with the provisions of the Prevention of Terrorism Act and the Exchange Control Act would enable the issue of magisterial orders on banks and other financial institutions to freeze accounts/financial assets etc. thereby providing a legal framework to deal with the suppression of financing of terrorism at present. This provision of the law, also enables criminal investigators to secure Magisterial Orders, compelling bank officials to disclose necessary information relating to suspected accounts (including details pertaining to inward and outward remittances, account balances etc.) Such investigations are designed to detect either proceeds of crime and/or monies collected for the purpose of committing crime. Hence, criminal investigators would be able to obtain vital information, notwithstanding the prevalence of 'confidentiality rules' in banking regulations and practices.

The legislation currently in force together with the legislation under preparation would provide a comprehensive legal framework to deal with all aspects of terrorism by whomsoever committed and is therefore not merely

confined to the persons and organizations listed in the Regulation to give effect to Security Council Resolution 1373 (2001).

Operative Paragraph 2

Sub Para (a) – The Prevention of Terrorism Act contains provisions to prevent, inter-alia, any person from committing or engaging, instigating or organizing a terrorist act. These provisions together with the provisions of the Public Security Ordinance provide a legal cover to prohibit the recruitment of cadres and supply of weapons to terrorist groups.

Provisions exist in the Firearms Ordinance for the regulation of the use of firearms and the Offensive Weapons Act prohibits the importation, manufacture, possession, sale, acquisition, transport use or supply of offensive weapons. Furthermore, the proposed legislation on Transnational Organized Crime will include provisions dealing with the recruitment to terrorist groups and the supply of weapons to terrorists.

As a long term measure, substantive legislation dealing with recruitment will be considered.

Sub Para (b) – Clause 9 of UN Regulation No. 1 of 2001, inter-alia, requires the reporting of information in the possession of any person regarding the commission or attempt to commit a terrorist offence, including information with regard to the movement or whereabouts of such persons, to a police officer. Failure to so report would result in imprisonment upon conviction. Sri Lanka has also established the SAARC Terrorist Offences Monitoring Desk under the SAARC Convention for the Suppression of Terrorism, which is an initiative taken within the regional forum of the South Asian Association for Regional Cooperation (SAARC).

The Criminal Investigations Department also maintains constant liaison with INTERPOL national branches of the Organization in the prevention and combating of transnational crimes. These contacts serve as a useful information exchange mechanism.

Sub Para (c) – Sri Lanka, as a matter of policy, does not grant asylum. The Immigrants & Emigrants Act of Sri Lanka provides for the following:

(A) Non issuance of visa to persons sentenced outside Sri Lanka for an extraditable offence within the meaning of any law which was or is in force in Sri Lanka relating to fugitive persons and their extradition (Section 11).

(B) To declare any person, who is deemed by the Minister from information received through official or diplomatic sources, to be an undesirable person for the purposes of admission into Sri Lanka (Section 12).

(C) To prohibit any person who is shown by sufficient evidence to be likely to conduct himself so as to be a danger to peace and good order in Sri Lanka (Section 12).

(D) Prohibition orders to be made in respect of a person who has been convicted in Sri Lanka or in any other country in respect of an offence for which a prison sentence has been passed and by reason of the circumstances connected therewith, is deemed to be an undesirable person for admission into Sri Lanka.

(E) Deportation orders in respect of persons sentenced outside Sri Lanka for an extraditable offence, and also;

(F) where the Minister in charge of the subject of migrants deems it to be conducive to the public interest to make deportation orders against such persons.

Furthermore, an Inter Departmental Committee constituted to review the Immigration & Emigration Laws, has recommended that deportation orders should also be made in respect of persons suspected of being involved

in the commission of serious international crimes, inter-alia, relating to terrorist acts or offences under similar legislation in force in a foreign State.

The recommendations of the Inter-Departmental Committee have been approved by the Cabinet of Ministers and new legislation to give effect to these recommendations is currently under preparation.

Sub Para (d) – Measures could be taken under Regulation No. 1 of 2001 as well as the Immigrants and Emigrants Act to deal with persons who finance, plan, facilitate or commit terrorist acts against other States or their citizens by making an order for deportation/removal of such persons. Action could also be taken in terms of the Extradition Law No. 8 of 1977, for the extradition of such persons.

Where Sri Lanka is a State Party to International Conventions for the Suppression of Terrorism, the enabling legislation provides the framework to give effect to its obligations under the International Conventions. For example, the Suppression of Terrorist Bombings Act No. 11 of 1999 provides for the taking of appropriate measures to prevent any person or group of persons from committing, encouraging, instigating, organizing or knowingly financing the commission of an offence under the Act. Jurisdiction is vested in the High Court to try offences under the Act, even if committed in any place outside the territory of Sri Lanka. Similar provisions exist in relation to legislation adopted to give effect to other International Conventions to which Sri Lanka is a State Party (**vide annexures D to J**). Such provisions will also be included in the draft legislation to give effect to the International Convention for the Suppression of the Financing of Terrorism.

Sub Para (e) – Implementing legislation enacted by Sri Lanka to give effect to International Conventions provides for the creation of offences covered under these Conventions as serious offences and provides for punishment which reflects the seriousness of such acts. Thus, for example, the Suppression of Terrorist Bombings Act No. 11 of 1999 creates the offence of terrorist bombings and any person guilty of an offence under the Act shall, on conviction after trial upon indictment by the High Court, be punished with imprisonment for a term not less than 15 years and not exceeding 20 years.

Sub Para (f) – Implementing legislation enacted to give effect to International Conventions to which Sri Lanka is a State Party provides for the affording of mutual assistance to Convention States. For instance, Section 11 of the Suppression of Terrorist Bombings Act No. 11 of 1999, provides for the affording of assistance to a Convention State for the investigation/prosecution of an offence, including assistance with regard to the taking of evidence or statements and the serving of process.

Such assistance is also extended on an ad-hoc basis in terms of Rules framed under the Courts Ordinance and the Foreign Tribunals Evidence Act in relation to requests received from foreign countries, for purposes of investigation and prosecution. Thus, Sri Lanka has extended assistance by way of serving process and recording of evidence and statements pursuant to requests received from foreign Courts/Tribunals. For instance, Sri Lanka provided assistance to the Courts and Tribunals of India in connection with the Rajiv Gandhi assassination case. The Criminal Investigation Department has been providing assistance at an administrative level to their counterparts in other States.

Legislation dealing with mutual legal assistance in criminal matters to provide a comprehensive legal basis for the affording of such assistance to foreign states and to receive such assistance from foreign states is pending finalization.

Sub Paragraph (g) – The Prevention of Terrorism Act together with relevant provisions of the Immigrants and Emigrants Act and the Code of Criminal Procedure Act, enable Criminal Investigators and/or Prosecutors to apply to Magistrates and obtain orders impounding the Passports of persons suspected or accused of having committed terrorist acts. Such impounding of Passports would enable securing their attendance at trial. Further, provisions of the Code of Criminal Procedure read with the Bail Act, would enable Criminal Investigators to move Magistrates to issue orders pertaining to the imposition of bail conditions, in order to ensure that suspects do not abscond pending the commencement and thereafter the determination of the trial.

Officers of the Criminal Investigations Department, Directorate of Internal Intelligence and the Department of the Controller of Immigration & Emigration, are stationed at the international Airport in order to prevent entry into and departure from Sri Lanka of illegal emigrants and immigrants including under documented and undocumented passengers. In carrying out these functions they maintain close liaison with Airport Liaison officers nominated by foreign Diplomatic Missions in Sri Lanka and also with Airline personnel, to check the validity of identification/travel documents. The officers of the Directorate of Internal Intelligence and the Criminal Investigations Department, act on intelligence received from the Directorate of Foreign Intelligence and foreign intelligence agencies, with a view to monitoring the entry and departure of persons who may have a criminal record including suspected involvement in terrorist activity. Officers of the Department of Customs too play an important role, by monitoring and checking the movement of goods to and from Sri Lanka. Security of the International Airport is maintained by the Sri Lanka Air Force and security personnel of Airport Aviation Company Ltd.

Enhanced penal sanctions on airline operators facilitating the illegal movement of persons using false documentation etc. are envisaged in terms of the proposed new Immigration legislation.

The recommendations of the Inter-Departmental Committee to review Legislation on Immigration and Emigration provides for the making of deportation orders in respect of persons suspected to have been concerned in the commission of offences under legislation pertaining to the suppression of terrorism or offences under similar legislation in force in a foreign State.

There are also ongoing discussions with the European Commission on addressing the question of human trafficking as part of a comprehensive EU Action Plan. An Agreement on the return of failed asylum seekers is also under negotiation. The negotiations have focussed on the nexus between illegal immigration and illegal criminal activities, in particular money laundering, drug trafficking and arms smuggling for terrorist purposes.

The facilitation of cooperation between law enforcement, immigration or other relevant authorities of member States with their counterparts in Sri Lanka by exchanging information to enable them to determine, inter-alia, the means and methods used by organized criminal groups for the purpose of trafficking and smuggling of persons, is envisaged under the Action Plan and the proposed Readmission Agreement.

Operative Paragraph 3

Sub Para (a) – The Sri Lanka branch of INTERPOL within the Criminal Investigation Department maintains close contact with INTERPOL branches world-wide in the exchange of operational information. Additionally, several bilateral Agreements have been concluded between the Intelligence Agencies of Sri Lanka and those of foreign countries for the exchange of operational information.

Sub Para (b)

Exchange of information and cooperation in judicial matters is currently carried out on an ad-hoc basis. A comprehensive law is under preparation for the affording of mutual legal assistance in criminal matters. The draft Money Laundering Bill also provides for the affording of mutual assistance including the supply of any relevant evidence at Sri Lanka's disposal to the authorities of any foreign State as may be necessary in relation to any criminal proceedings instituted in that State in respect of a money laundering offence.

Sub paras (c), (d) and (e)

Sri Lanka is a Party to the following Conventions which constitute 10 of the 12 major International Conventions on the Suppression of Terrorism:

1.	Convention on the Suppression of Unlawful Seizure of Aircrait, signed at the Hague on 16 December, 1970.	Acceded on **30.05.1978**
2.	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September, 1971.	Acceded on **30.05.1978**
3.	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December, 1973.	Acceded on **27.02.1991**
4.	Protocol for the Suppression of Unlawful Acts of Violence at Airpoets Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February, 1988.	Signed on **28.10.1988** Ratified on **11.02.1997**
5.	International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on 15 December, 1997.	Signed on **12.01.1998** Ratified on **23.03.1999**
6.	Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September, 1963.	Acceded on **30.05.2000**
7.	International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December, 1979.	Acceded on **08.09.2000**
8.	Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation, done at Rome on 10 March, 1988.	Acceded on **08.09.2000**
9.	International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December, 1999.	Signed on **10.01.2000** Ratified on **08.09.2000**
10.	Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March, 1991.	Acceded on **11.10.2001**

In addition, Sri Lanka took the initiative to negotiate the SAARC Regional Convention on Suppression of Terrorism within the South Asian regional forum of the South Asian Association for Regional Cooperation (SAARC). Sri Lanka signed the Convention on 4th November 1987 and Ratified it on 22nd August 1988.

The following legislation has been enacted to give effect to the International Conventions enumerated above.

1. Offences Against Aircraft Act No. 24 of 1982 – **vide appendix D**
2. SAARC Regional Convention on Suppression of Terrorism Act No. 70 of 1988 – **vide appendix E**

3. Prevention and Punishment of Crimes against Internationally Protected Persons Act No. 15 of 1991 – **vide appendix F**
4. Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation Act No. 31 of 1996 – **vide appendix G**
5. Convention for the Suppression of Terrorist Bombings Act No. 11 of 1999 – **vide appendix H**
6. Prevention of Hostage Taking Act No. 41 of 2000 – **vide appendix I**
7. Suppression of Unlawful Acts Against the Safety of Maritime Navigation Act, No. 42 of 2000 – **vide appendix J**

The above legislation provides a comprehensive legal framework to prevent and suppress terrorist activities, which are covered in the major international Conventions relating to terrorism.

Additionally, draft legislation on 'cyber crime' is under preparation. The provisions of the draft legislation seek to criminalize the use of computer technology for the commission of any crimes including terrorist acts. The draft legislation also provides for extra-territorial jurisdiction in respect of offences thereunder.

Sub paras (f) and (g) – Sri Lanka does not follow a policy of granting political asylum. Claims of political motivation are not recognized as grounds for refusing requests for extradition of alleged terrorists under the provisions of the SAARC Regional Convention on Suppression of Terrorism Act No. 70 of 1988 and the Suppression of Terrorist Bombings Act No. 11 of 1999. Similar provisions are being incorporated in the legislation to give effect to the International Convention for the Suppression of Financing of Terrorism.

III. CONCLUSION

Terrorism is a phenomenon that unfortunately is not new to Sri Lanka. Apart from our own efforts at the domestic level to cope with this phenomenon, including by addressing it politically, Sri Lanka has been in the vanguard of the campaign in urging greater attention to be paid in this regard by the international community.

Within the regional forum of the South Asian Association for Regional Cooperation (SAARC), Sri Lanka called for a study by the SAARC of the phenomenon of terrorism, as it affects the security and stability of the South Asian region. Within the United Nations forum, both as a member of the Bureau of the Ad-hoc committee on Measures to Eliminate International Terrorism and as a national delegation, it has fully supported the negotiation and conclusion of the recent international Conventions relating to the suppression of terrorist bombings and suppression of financing of terrorism.

While legal measures have been devised at the national level to give effect to these international Conventions and the Security Council Resolution, the proposed anti money laundering legislation will strengthen the existing legal regime, particularly in monitoring suspected terrorist funding.

The proposed legislation envisages the establishment of a special Supervisory Authority of a multi disciplinary nature. The successful operation thereof would, however, depend on the effective training of personnel and the enhancement of skills of such personnel.

Sri Lanka would therefore welcome the providing of technical assistance in order to enhance and hone such skills through training programs etc. in the financial intelligence sector, either bilaterally or through any international Trust Fund that may be established.

List of appendices*

1.	The United Nations Act No. 45 of 1968	– Appendix A
2.	The United Nations Regulation No. 01 of 2001	– Appendix B
3.	The Prevention of Terrorism Act No. 48 of 1979	– Appendix C
4.	Offences Against Aircraft Act No. 24 of 1982	– Appendix D
5.	South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism Act No. 70 of 1988	– Appendix E
6.	Prevention and Punishment of Crimes against Internationally Protected Persons Act No. 15 of 1991	– Appendix F
7.	Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation Act No. 31 of 1996	– Appendix G
8.	Suppression of Terrorist Bombings Act No. 11 of 1999	– Appendix H
9.	Prevention of Hostage Taking Act No. 41 of 2000	– Appendix I
10.	Suppression of Unlawful Acts Against the Safety of Maritime Navigation Act No. 42 of 2000	– Appendix J

* The appendices are on file with the Secretariat and are available for consultation.

United Nations S/2001/1283

Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from the Republic of Korea, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-20322 (E) 220102 040202

Annex

[Original: English]

Letter dated 26 December 2001 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Upon instructions from my Government, I have the honour to enclose herewith the report of the Government of the Republic of Korea on the measures taken to implement United Nations Security Council resolution 1373 (2001), pursuant to paragraph 6 of the said resolution (see enclosure).

My Government stands ready to provide the Committee with further reports or information as necessary, upon the request of the Committee.

(*Signed*) **Sun** Joun-yung
Permanent Representative

Enclosure

Report to the Counter-Terrorism Committee on the measures taken by the Government of the Republic of Korea to implement United Nations Security Council resolution 1373 (2001), pursuant to paragraph 6 of the said resolution

Recognizing the importance of United Nations Security Council resolution 1373 of 28 September 2001, the Government of the Republic of Korea is making utmost efforts for its implementation. All authorities concerned are closely cooperating with each other in this regard and in particular, the Ministry of Foreign Affairs and Trade appointed an Ambassador for Counter-terrorism and Afghanistan Affairs in December this year.

At the international level, the Republic of Korea played an active role in the adoption of the "APEC Leaders' Statement on Counter-terrorism" on 21 October 2001 at the APEC Summit Meeting held in Shanghai and the "2001 ASEAN Declaration on Joint Action to Counter Terrorism" on 5 November 2001 at the ASEAN + 3 Summit Meeting held in Brunei.

With a view to intensifying efforts to fight terrorism, the Korean government is also taking steps to enact a new Anti-Terrorism Bill which comprehensively deals with all aspects of terrorism. Detailed information on this legislation will be duly reported to the Security Council upon request.

This report will focus on the following three areas in the order they appear in Security Council resolution 1373: (1) Prevention and suppression of the financing of terrorist acts; (2) Bringing the perpetrators of terrorism to justice and strengthening international cooperation for effective punishment of terrorists; and (3) Accession to international conventions and protocols relating to terrorism.

I. Prevention and Suppression of the Financing of Terrorist Acts

1. The Republic of Korea signed the International Convention for the Suppression of the Financing of Terrorism on 9 October 2001.

2. With the entry into force of the Proceeds of Crime Act on 28 November 2001, it has become possible to take such measures as confiscation, additional collection and other preservation measures with regard to funds and other financial assets provided for or in return for terrorist acts. Anyone who finances terrorist acts or provides physical or material support to entities or persons involved in terrorist acts can be penalized as an accomplice to terrorism under the provisions of the relevant special laws (refer to II.1).

3. All financial assets and properties directly or indirectly owned by those persons and entities in the lists of 8 March 2001, 8 October 2001, 19 October 2001, and 9 November 2001 provided by the Committee established by Security Council resolution 1267 on Afghanistan of 15 October 1999 have been frozen in accordance with the relevant guidelines issued by the Korean government on 9 October 2001.

4. The passage of the Anti-Terrorism Bill, which is currently under deliberation at the National Assembly, will enable more effective regulation and control of all funds and financial assets related in any way to terrorist activities.

II. Bringing the Perpetrators of Terrorism to Justice and Strengthening International Cooperation for Effective Punishment of Terrorists

1. The Criminal Act of the Republic of Korea and the following special laws prescribe acts of terrorism as serious criminal offenses:
   - Punishment of Violence Act
   - Military Criminal Act
   - Aviation Act
   - Safety of Aircraft Operation Act
   - Railroad Act
   - Toxic Chemical Control Act
   - Atomic Energy Act
   - Protection of Military Installations Act

   cf. The aforementioned Anti-Terrorism Bill contains provisions that prescribe new criminal terrorist offenses

2. Pursuant to the provisions of the Act on International Judicial Mutual Assistance in Criminal Matters of 1991, the Republic of Korea exchanges and shares terrorism-related information and data with other states and provides assistance and cooperation in criminal investigations or proceedings relating to terrorist acts when necessary on the basis of bilateral treaties on mutual legal assistance in criminal matters, and in the case that no such treaty exists between the states involved, on the basis of the principle of reciprocity.

   - States with which the Republic of Korea has concluded a treaty on mutual legal assistance in criminal matters as of 17 December 2001: Australia, Canada, France, Hong Kong, the United States of America, Mongolia, China, New Zealand, Russia (9)

3. The Republic of Korea aims to prevent and punish acts of terrorism by extraditing perpetrators of terrorism through bilateral extradition treaties.

   - An offense shall be deemed extraditable if, at the time of request, it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year. Most acts of international terrorism fall under the category of extraditable offenses.
   - Under Article 4 of the Extradition Act of 1988, offenders may be extradited based on the principle of reciprocity even when no extradition treaty exists between the Requesting and Requested State.
   - Extradition shall not be granted when the Requested Party determines that the offense for which extradition is requested is a political offense. Terrorist acts, however, do not fall under this category.
   - States with which the Republic of Korea has concluded or is in the process of negotiating an extradition treaty as of 17 December 2001:

     i. Entered into force: Australia, Canada, Spain, the Philippines, Paraguay, Chile, Mexico, the United States of America, Mongolia, Argentina, Thailand (11)
     ii. Signed: Brazil, China, Indonesia, New Zealand (4)
     iii. Under negotiation: Russia, Japan (2)

4. The Korea Financial Intelligence Unit (KFIU), established on 28 November 2001 when the Financial Transaction Report Act entered into force, exchanges and shares information on suspicious financial transactions of funds and financial assets relating to criminal activities with financial intelligence units in other states.

III. Accession to International Conventions and Protocols Relating to Terrorism

1. The Republic of Korea is a state party to the following seven international conventions and protocols relating to terrorism.

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (joined on 19 February 1971)
- Convention for the Suppression of Unlawful Seizure of Aircraft (joined on 18 January 1973)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (joined on 2 August 1973)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (joined on 27 June 1990)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (joined on 25 May 1983)
- International Convention against the Taking of Hostages (joined on 4 May 1983)
- Convention on the Physical Protection of Nuclear Material (joined on 7 April 1982)

2. The Republic of Korea is taking necessary measures for the enactment and modification of relevant laws and regulations with a view to an early accession to and ratification of the following five conventions and protocols.

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platform Located on the Continental Shelf
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (signed on 1 March 1991, deposit of ratification expected shortly)
- International Convention for the Suppression of Terrorist Bombing (signed on 3 December 1999)
- International Convention for the Suppression of the Financing of Terrorism (signed on 9 October 2001, currently in the process of ratification)

United Nations S/2001/1284

Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from the Russian Federation, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-20316 (E) 230102 040202

Annex

Letter dated 27 December 2001 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Russian]

I have the honour to transmit herewith the report of the Russian Federation submitted in accordance with paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Sergey **Lavrov**

Enclosure

Report by the Russian Federation to the Counter-Terrorism Committee established pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Introduction

The Russian Federation actively supports the efforts to combat terrorism being made by the international community, in which the United Nations and its Security Council are playing a central coordinating role. Since it considers international terrorism to be one of the main dangers threatening humanity, the Russian Federation favours united efforts by all States to combat this universal evil.

Moscow welcomed Security Council resolution 1373 of 28 September 2001, pursuant to which the Security Council Counter-Terrorism Committee was established and is successfully functioning, as a unique instrument for monitoring the fulfilment by all States of their obligations to counteract international terrorism.

It is urgently necessary to reinforce the international legal basis for effective counter-terrorist cooperation among States. A top priority is to ensure the universality of all 12 global conventions on this subject. In addition, Russia hopes that agreement can be reached as soon as possible on the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism.

The success of the war on terrorism declared by the international community depends on the adoption of a whole series of complex decisions, including the rejection of double standards. The war on terrorism must be waged equally strongly and consistently in all regions of the world.

The war on terrorism must not be considered as a clash of civilizations. As a State comprising many nationalities and faiths, Russia is convinced that it is completely inadmissible to equate terrorism with any nationality, religion or culture. The war on terrorism must unite all members of the international community and become the catalyst for the creation under United Nations auspices of a global system, based on the principles of the United Nations Charter and the underlying norms of international law, to deal with the new challenges and threats.

The financing of terrorism is its Achilles heel. A crushing blow will be dealt to the whole infrastructure of terrorism if the funds sustaining it can be cut off decisively.

One priority is to deprive terrorism of its social underpinning. This requires increased efforts to eliminate poverty, unemployment, illiteracy and discrimination on racial, ethnic, religious and other grounds. Today it is more urgent than ever to ensure the steady development of all regions of the world and to focus on the social aspects of the globalization process.

Conflicts are the breeding ground of terrorism. In this connection, Russia has proposed the formulation under United Nations auspices of a comprehensive strategy for the elimination of external financing of armed conflicts. We are ready to pursue cooperation with all interested States to implement this initiative.

Efforts must be made to promote active rejection of terrorism in the world. A vital contribution to this work must be made not only by States but also by civil society, including non-governmental organizations. Russia has made a timely proposal for the convening under United Nations auspices of a universal forum to discuss the role of civil society, and particularly of the mass media, in the war on terrorism.

As a champion of the cause of the eradication of terrorism in all its forms and manifestations, the Russian Federation is fulfilling its obligations under Security Council resolution 1373 (2001) and submitting its national report on the measures taken to meet the requirements of that resolution. The report has been prepared in accordance with the recommendations of the Counter-Terrorism Committee.

1 (a) What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in response to questions on 1 (b) to (d)?

In pursuance of Federal Act No. 115 of 7 August 2001 "On the prevention of the legalization of funds obtained by criminal means (money-laundering)", on 1 November 2001 the President of the Russian Federation signed Decree No. 1263 "On the organ empowered to prevent the legalization of funds obtained by criminal means (money-laundering)", which provides for the creation of the Committee of the Russian Federation for Financial Monitoring, responsible to the Russian Ministry of Finance. Work is being done to devise an effective mechanism for identifying and freezing sources of terrorism financing.

An interdepartmental working group on measures to prevent the financing of terrorism has been set up in the Ministry of Finance of the Russian Federation. It is composed of representatives of the Federal Security Service, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Federal Service of Tax Police, the Foreign Intelligence Service, the Bank of Russia and the Procurator-General of the Russian Federation. During the period when the Committee of the Russian Federation on Financial Monitoring was being set up and starting its actual work, the following questions were referred to this working group:

- Interaction with overseas partners in the suppression of financing of terrorism;
- Coordination of the activities of law enforcement agencies and oversight organizations;
- Interaction with the Federal Counter-Terrorist Commission.

In December 2001, the State Duma of the Russian Federation adopted Federal Act No. 95528-3 "On the introduction of amendments and additions to legislation of the Russian Federation", which provided for the introduction of a number of additions to the Criminal Code of the Russian Federation, establishing increased liability for creation of terrorist organizations, management of such organizations, recruitment to terrorist groups, supply of weapons and training of persons to commit crimes of a terrorist nature, as well as financing of terrorist organizations.

Under this Act, the mere fact of collecting funds for the commission of terrorist crimes is sufficient grounds for establishment of criminal liability. The Act also provides for additions to the Code of Criminal Procedure, designed to ensure

the safety of judges and witnesses participating in criminal trials for "terrorist" activities.

The Bank of Russia is working actively to implement Federal Act No. 115 of 7 August 2001 "On the prevention of the legalization of funds obtained by criminal means (money-laundering)". It has adopted a series of normative and other texts concerning inter alia:

- Recommendations to the effect that credit institutions should formulate rules of internal control in accordance with the Federal Act, including record-keeping, data confidentiality guarantees, skills training for supervisors and criteria for exposing and identifying unusual transactions;
- Procedure for credit institutions to provide the responsible organ with information on operations that involve money or other assets and are subject to compulsory monitoring in accordance with the Federal Act and on other operations that involve money or other assets connected with money-laundering;
- Procedure for the Bank of Russia to verify implementation of the Federal Act by credit institutions as regards record-keeping and preservation and provision of information on operations subject to compulsory monitoring and to verify the existence of internal controls in credit institutions designed to prevent the legalization of funds obtained by criminal means (money-laundering).

As immediate action to prevent the financing of terrorism, in October 2001 the Bank of Russia notified the Russian banking system of the measures adopted by the United States to prevent the financing of terrorism and brought to the attention of credit institutions the list published by the United States of organizations and persons suspected of being involved in the financing of terrorism.

Since the lifeblood of terrorist and extremist organizations is the illegal arms and drug trade, the Ministry of Foreign Affairs, the Federal Border Service and the State Customs Committee of the Russian Federation are taking practical measures in these areas. In particular, in 2000-2001, law enforcement services of the Russian Federation foiled 296 attempts to smuggle weapons, ammunition, explosives and explosive devices. In the course of these operations, they seized over 31 million pieces of ammunition, 97 fire-arms, about 9,000 explosives and 11 explosive devices. They uncovered instances of smuggling of over 14 tons of narcotics, including almost 3 tons of heroin; over 300 tons of precursors were seized from illicit traffic.

At the outset of the counter-terrorist operation in Afghanistan, the Federal Border Service sent additional staff to close down the main drug trafficking route in the Tajik-Afghan part of the border. During the first 11 months of 2001, units of the Federal Border Service on the Tajik-Afghan border seized over 5 tons of narcotics, including 2.4 tons of heroin.

1 (b) What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Under article 3 of the Federal Act of 25 July 1998 "On measures to combat terrorism", the wilful financing or provision of other assistance to a terrorist organization or terrorist group is considered equivalent to terrorist activity. Persons

guilty of providing or collecting funds for the commission of terrorist acts bear criminal liability for the crimes committed by the terrorists, as accessories to such offences, in the manner specified in articles 32 to 34 of the Criminal Code of the Russian Federation. In accordance with section 5 of article 33 of the Criminal Code, they are considered as accomplices and are responsible for the commission of specific offences under the same article in the special section of the Criminal Code as the perpetrator of the terrorist act. The extent of their liability is determined by the nature and extent of the actual participation by each person in the commission of the offence (section 1 of article 34 of the Criminal Code).

The need to increase the criminal liability of persons guilty of collecting funds for the commission of terrorist acts led to the drafting of the legislation mentioned in the answer under subparagraph 1 (a). According to this draft, the mere fact of collecting funds for the commission of such offences is sufficient grounds for establishing criminal liability.

1 (c) What legislation and procedures exist for freezing accounts and assets at banks and financial institutions?

The procedure for the attachment of physical persons' property, including monetary deposits, following the commission of offences is described in article 175 of the Code of Criminal Procedure of the Russian Soviet Federated Socialist Republic, which is in force in the Russian Federation. Property may be attached in the case of persons accused or suspected of committing offences, persons who under the law bear material responsibility for their actions and other persons possessing property acquired by criminal means. The purpose of attachment is to allow the introduction of a civil suit or forfeiture of the property.

The situation as regards forfeiture of the property of organizations connected with terrorism is much more complicated. Article 25 of the Federal Act "On measures to combat terrorism" provides for the possibility of a court decision recognizing that an organization is a terrorist organization and ordering its liquidation. In this case, the organization's property is liable to be forfeited and returned to the State. Article 27 of the Federal Act of 3 February 1996 "On banks and banking activity" establishes the procedure for attachment of juridical persons' monetary assets on account with, deposited with or in the safekeeping of credit institutions.

At this time, Russian ministries and departments are actively engaged in drafting legislation whereby organizations could be more promptly held liable for supporting terrorist activity.

1 (d) What measures exist to prohibit the activities listed in this subparagraph?

In the Russian Federation, a general prohibition on the provision to physical or juridical persons of funds for the commission of terrorist acts exists in the form of the establishment of criminal liability of physical persons for participation in offences of a terrorist nature (Criminal Code of the Russian Federation) and the liquidation of organizations supporting terrorism (Federal Act "On measures to combat terrorism"). However, the person concerned must be aware that he is providing the funds specifically for terrorist purposes; otherwise the establishment of any kind of liability would be contrary to the Russian Federation's international obligations in the matter of the protection of human rights (see, for example, article

11 of the Universal Declaration of Human Rights and article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) and to the principle of the presumption of innocence enshrined in article 49 of the Constitution of the Russian Federation.

In order to block channels for the financing of the activities of illegal armed units, in 2000-2001 the law enforcement agencies of the Russian Federation identified over 150 commercial entities engaged in foreign trade activities controlled by organized criminal groupings. In cooperation with the relevant services of other countries, foreign informers were placed in these criminal groupings. The information on their activities is used by Russian law enforcement agencies to halt their illegal activity and take the necessary measures to that end.

2 (a) What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Partial answers to these questions are given in the comment under 1 (a).

It should also be noted that at this time recruitment to terrorist groups and the supply of weapons to terrorists by physical persons are considered as complicity in the offences committed by the terrorists. Persons who recruit terrorists may be held criminally liable under articles 209 on "Banditry" and 210 on "Organization of criminal society" (criminal organization) of the Criminal Code of the Russian Federation. Persons who supply weapons to terrorists are liable under article 222 of the Criminal Code on "Illegal acquisition, transfer, sale, storage, transport or carrying of weapons, basic parts thereof, ammunition, explosives and explosive devices". Organizations engaged in similar activities are liable to liquidation, in accordance with article 25 of the Federal Act "On measures to combat terrorism".

In pursuance of Security Council resolution 1373 (2001), draft Federal Act No. 52289-3 has been submitted to the State Duma of the Russian Federation on the introduction of amendments and additions to the Federal Act "On measures to combat terrorism", concerning the issues of exchange of intelligence information, compensation for damage caused by terrorist acts and additional measures to combat illegal trade in weapons, explosives and ammunition.

2 (b) What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

At present, the Russian Federal Security Service has official contacts with over 80 law enforcement agencies and special services of other States. In practice, an important component of this cooperation is mutual assistance in the context of the war on international terrorism.

In 2001, practical mutual assistance involving foreign partners took an important new form: cooperation in surveillance of the financial activities of terrorist units (primarily the Chechen "irreconcilables"), identification of various banking structures, non-governmental organizations and the funds subsidizing them. Arrangements have been made to implement joint operational measures with certain

special services in order to identify firms sponsoring Chechen terrorists, channels for the supply of weapons, mercenaries and fighter training camps.

In order to provide early warning of terrorism, intelligence surveillance has been set up of the activities of extremist organizations in Russia and in the member countries of the Commonwealth of Independent States (CIS), in conjunction with the law enforcement agencies of those countries. At present, for example, six international religious organizations with extremist leanings are under close scrutiny by the Russian authorities. The authorities of Azerbaijan, in cooperation with Russian law enforcement agencies, recently shut down a centre providing financing to religious extremists and identified 27 members of organizations actively participating in the fighting in Dagestan, nine of whom have been detained.

In the course of counter-terrorist operations in the Northern Caucasus Region, preventive measures are being taken to ensure the safety of the population and the local organs of authority; they have foiled attempts to provide financial, material and technical support, weapons and ammunition to illegal armed units for the commission of terrorist acts both in the territory of the Russian Federation and beyond its borders.

In order to enhance the effectiveness of international and interdepartmental cooperation, including early warning mechanisms for the exchange of information in the war on terrorism, the Council of Heads of Customs Services of the CIS countries has, at the initiative of the Russian Federation, established a special regional liaison centre for CIS with the World Trade Organization (Moscow RILO).

2 (c) What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph?

The Federal Act "On procedures for leaving and entering the Russian Federation" establishes that aliens and stateless persons are denied entry into the Russian Federation if this is necessary for reasons of national security and if during any previous stay in the country they were sentenced under Russian legislation for the commission of serious or particularly serious offences, which include terrorism.

In accordance with articles 2 and 5 of the Federal Act of 28 July 1996 "On refugees", terrorists cannot be recognized as refugees.

According to paragraph 5 of the Statute on the procedure for granting of political asylum by the Russian Federation, confirmed by Decree of the President of the Russian Federation of 21 July 1997, political asylum in the territory of the Russian Federation is not granted to a person prosecuted for actions or omissions categorized as offences in the Russian Federation or a person guilty of committing actions contrary to the purposes and principles of the United Nations. Thus it is impossible under Russian legislation for asylum to be granted to terrorists or their accomplices.

As part of the joint war on terrorism and organized crime in CIS, in the course of operations conducted since the beginning of 2001, 2,013 criminals were identified for purposes of extradition in CIS countries and 1,443 persons were extradited. During the same period, agencies of the Ministries of Internal Affairs of the CIS countries and the Baltic States identified 236 criminals for extradition in the Russian Federation and 109 of them were extradited. In 2001, the Ministry of Internal

Affairs of the Russian Federation transmitted to the relevant Ministries of the CIS member countries 75 documents concerning anti-terrorist activity.

2 (d) What legislation or procedures exist to prevent terrorists from acting from your territory against other States or citizens?

See comments under paragraphs 1 (b) and 2 (a).

2 (e) What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts?

Under article 15 of the Criminal Code of the Russian Federation, serious criminal offences are premeditated actions for which the maximum punishment does not exceed 10 years' imprisonment and particularly serious premeditated actions for which the maximum punishment is over ten years' imprisonment or a more severe punishment. Article 205 of the Criminal Code states that the punishment for "terrorism" is imprisonment for a period of from 5 to 10 years, for a period of from 8 to 15 years in cases with aggravating circumstances and for a period of from 10 to 20 years in cases with especially aggravating circumstances.

Terrorist acts are thus serious or especially serious offences, a fact which has special significance in determining the maximum punishment for repeat offenders (articles 18 and 68 of the Criminal Code).

See also the comments under paragraph 3 (a).

2 (f) What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Existing Russian legislation allows the attachment, at the request of foreign partners, of property and funds of physical and juridical persons only on the basis of properly submitted requests for the provision of judicial assistance in criminal cases under investigation by them.

In order to expedite the processing of such requests in cases involving offences of a terrorist nature, agreements have been reached with the representatives of certain countries for coordinators from the two parties to be appointed to deal with issues of mutual assistance in this area.

The Procurator-General has been given responsibility for coordinating the response of the Russian Federation's law enforcement agencies to requests for judicial assistance in criminal cases concerning offences of a terrorist nature.

In October and November 2001, following a request from the competent United States agencies, the law enforcement agencies of the Russian Federation conducted a search in Russian territory for the funds and assets of a number of representatives of terrorist organizations and juridical persons connected with them.

See also the comments under paragraph 3 (c) and the section entitled "Additional information".

2 (g) How do border controls in your country prevent the movement of terrorists? How do your procedures for the issuance of identity papers and travel documents support this?

In accordance with paragraph 2 of Security Council resolution 1373 (2001) specifying that terrorists and terrorist groups should not be allowed to move freely in its territory, the Federal Border Service of the Russian Federation has established effective border control in the case of persons who have been properly denied entry into the country.

The Federal Border Service receives its instructions from the law enforcement agencies conducting intelligence investigations of persons who have been prohibited from entering and leaving the Russian Federation in the manner established by the laws of the Federation.

Screening operations are conducted in the case of persons allegedly involved in the activities of terrorist groups.

Certain aliens and stateless persons are questioned to determine whether the purpose of their travel in the Russian Federation corresponds to the purpose which they stated when they obtained Russian visas at consular missions abroad of the Russian Ministry of Foreign Affairs.

Thus, during the period from September to December 2001, the border control agencies of the Russian Federation identified 32,292 persons (including 27,078 aliens) without proper papers or with incorrectly issued papers authorizing them to cross the State border.

3 (a) What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

In order to prevent the commission of terrorist acts, the Federal Border Service of the Russian Federation has instituted a regular exchange of information with neighbouring States under bilateral and multilateral agreements on mutual assistance in the protection of State borders.

With a view to intensifying and accelerating the exchange of information, a second meeting was held in Moscow and Saint Petersburg of heads of border agencies of Canada, the Republic of Korea, the United States, Japan and the Russian Federation, at which specific areas were identified for mutual assistance in agreed areas of cooperation.

The outcome of the meeting was a decision to establish national border coordinating centres in each of the countries to provide liaison at the bilateral and multilateral levels. In connection with the creation of an information system, the participants in the meeting identified channels for the exchange of information and methods to ensure its confidentiality. It was decided, as an experiment, to have a bilateral exchange of information between the north-east regional office of the Federal Border Service of the Russian Federation and the 17th United States Coast Guard District.

3 (b) What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

The Ministry of Defence of the Russian Federation has organized with the military of the States participating in the anti-terrorist coalition regular exchanges of information on the activities of armed terrorist groupings. Regular exchanges of information with partners in the anti-terrorist coalition are also organized by other Russian ministries and departments, particularly in the context of the special services.

In order to intensify and accelerate exchanges of operational information, as envisaged in Security Council resolution 1373 (2001), it would be desirable to create an international database of persons and structures providing financial support to terrorism and methods by which such support is provided. It would also be important to organize regular exchanges of information on sources and channels for the smuggling to and from countries of currency, highly dangerous nuclear materials, chemical and biological substances, weapons and drugs, as well as customs offences and other offences in off-shore zones. Cross-checking of export-import contracts and of circuits to prevent currency embezzlement and concealment of currency in foreign banks could also be an effective way of detecting and prosecuting offences. This would also be facilitated by the creation of a mechanism for the exchange of information between the customs authorities of the Russian Federation and the corresponding authorities in other countries concerning all types of banking operations for criminal cases being tried and investigations being conducted.

See also comments under paragraph 3 (a).

3 (c) What steps have been taken to cooperate in the areas indicated in this subparagraph?

The answer to this question is given in the comments under paragraphs 3 (a) and (b).

In addition, it was decided at the Yerevan session of the Council on Collective Security (25 May 2001) to set up by 1 August 2001 collective rapid-deployment forces under the Treaty on Collective Security in the Central Asian region, to include units and subdivisions of the armed forces of four CIS States (Kazakhstan, Kyrgyzstan, Tajikistan and the Russian Federation). The forces' task is to provide military security for the States parties to the Treaty on Collective Security in the Central Asian region; this includes averting external military aggression and conducting joint anti-terrorist operations.

Moreover, as part of the specific measures (in view of the anti-terrorist operation "Enduring Freedom") adopted in accordance with the decision of the President of the Russian Federation and the decrees of the Minister of Defence of the Russian Federation of 23 September 2001, an interdepartmental system of control and mutual assistance was set up in the form of a Coordination Group headed by the Minister of Defence of the Russian Federation. An Operational Headquarters headed by the chief of the Main Intelligence Unit of the General Staff of the Armed Forces of the Russian Federation is a working body of the Coordination Group and an Intelligence Unit is outposted to Dushanbe.

Mutual assistance to combat terrorism is being actively promoted within the Shanghai Cooperation Organization. For example, on 15 July 2001 the leaders of the six member States of the Shanghai Cooperation Organization signed the Shanghai Convention on Combating Terrorism, Separatism and Extremism. Work is continuing on the drafting of constituent instruments for the regional anti-terrorist structure of the Shanghai Cooperation Organization.

3 (d) and (e) What are your intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph? Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

The Russian Federation is a party to 10 of the 12 global anti-terrorist conventions. An advanced stage has been reached in preparations for ratification of the International Convention for the Suppression of the Financing of Terrorism (1999) and the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1990), which have been signed by the Russian Federation.

In order to promote enforcement of Security Council resolutions 1267 of 15 October 1999 and 1333 of 19 December 2000, the President of the Russian Federation signed Decrees on measures to implement those resolutions, providing inter alia for the immediate freezing of the funds and other financial assets of terrorist groups and physical persons connected with the activities of the Taliban movement and the al-Qa'idah organization.

3 (f) What legislation, procedures and mechanisms are in place for ensuring asylum-seekers have not been involved in terrorist activity before granting refugee status?

See comments under paragraph 3 (g).

3 (g) What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists.

These paragraphs of the resolution are implemented by the procedures for recognizing that persons are refugees or need to be granted political asylum that are established in the Federal Act "On refugees" and in the Statute on the procedure for granting political asylum. The concept of "political crime" does not exist in the Russian Federation. In addition, reference may not be made to political motives for the commission of the actions (which include terrorism) classified as crimes under Russian legislation and the international treaties to which the Russian Federation is a party, even in connection with the extradition of persons accused of committing or being involved in terrorist acts.

* * *

Additional information

1. In accordance with paragraph 4 of Security Council resolution 1373 (2001), which notes the close connection between international terrorism and transnational crime, and in view of the need to improve the coordination of efforts in this

connection at the national level, a Federal Anti-Terrorist Commission has been established headed by the Prime Minister of the Russian Federation and consisting of the heads of the relevant departments. Similar commissions are being established in the various parts of the Russian Federation.

2. In order to meet more fully the requirements of Security Council resolution 1373 (2001), the Russian Federation is engaged in active multilateral and bilateral cooperation to combat terrorism by means of:

- Bilateral intergovernmental agreements on air traffic, containing special articles on aviation safety;
- Universal and regional treaties on crime prevention, containing provisions on measures to combat terrorism, in particular the 1998 Agreement between the Governments of member States of the Organization of the Black Sea Economic Cooperation on cooperation in combating crime, particularly organized forms thereof, and the 1998 Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism;
- Bilateral intergovernmental treaties on cooperation in combating crime (concluded with Belgium, Egypt, Finland, Germany, Hungary, Iceland, Ireland, Israel, Norway, Portugal, South Africa, Sweden, United Kingdom, Uzbekistan). In 1996, the Agreement between the Government of the Russian Federation and the Government of the United States of America on cooperation in matters of criminal law entered into force;
- Bilateral interdepartmental agreements on cooperation with competent departments in other countries (concluded with CIS countries and with Albania, Argentina, Austria, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Estonia, France, Hungary, India, Iran, Ireland, Italy, Korea, Latvia, Lithuania, Macedonia, Mongolia, Poland, Romania, Slovakia, South Africa, Sweden, Switzerland, Turkey, Vietnam, etc.);
- Inter-State treaties on extradition and judicial assistance in criminal cases (the Russian Federation is currently party to three multilateral conventions concluded under the auspices of the Council of Europe and CIS and 33 bilateral treaties on extradition and judicial assistance in criminal cases);
- Other international agreements (for example, the Memorandum of Understanding of 11 March 2000 between the Ministries of Internal Affairs of the Republic of Azerbaijan, the Republic of Armenia, Georgia and the Russian Federation (the "Borzhomi Four") on measures to combat terrorism and other manifestations of extremism, the Memoranda of Understanding between the Ministry of Internal Affairs of the Russian Federation and the Ministries of Internal Affairs of the Republic of Azerbaijan and Georgia concerning measures to combat terrorism);
- The Programme of the States Members of CIS for Combating International Terrorism and Other Manifestations of Extremism to the Year 2003 and the Inter-State Programme of Concerted Measures to Combat Crime for the Period 2000-2003.

United Nations S/2001/1285

Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Brazil, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-20376 (E) 050202 080202

Annex

Letter dated 26 December 2001 from the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to attach the Brazilian report to the Counter-Terrorism Committee, pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Enio **Cordeiro**
Minister Counsellor a.i.

Enclosure

Brazil

Report to the Counter-Terrorism Committee on the implementation of United Nations Security Council resolution 1373 (2001)

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1. Introduction

Under the Brazilian Constitution of 1988, the repudiation of terrorism is one of the governing principles of Brazilian international relations. Thus, prior to the events of 11 September 2001, Brazil had already been implementing the measures set forth in Security Council resolution 1373 (2001) and had always sought to comply with United Nations General Assembly and Security Council resolutions on terrorism.

Multilaterally, the Government of Brazil has been taking the domestic steps necessary to link the country to all international agreements on terrorism. At the regional and bilateral levels, Brazil has signed and implemented police and judicial cooperation agreements, which are important tools in combating crimes related to terrorist activities.

This and other information is presented in detail in the present report, which is organized on the basis of the various paragraphs of resolution 1373 (2001) and the guidelines issued by the Counter-Terrorism Committee.

2. Paragraph 1

"*The Security Council* (...) *Acting* under Chapter VII of the Charter of the United Nations,

Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;"

What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

Brazil is fully committed to suppressing the financing of terrorist acts and actively participates in international efforts to combat money-laundering. The country's legislation on this subject is modern and quite complete.

Article 14 of Act 9613/98 created the Financial Activities Control Council (COAF), a financial intelligence unit responsible for regulating, enforcing administrative penalties, receiving reports and reviewing and identifying instances where there is a suspicion of crimes relating to the laundering or concealment of property, rights and assets. It is the Council's task to coordinate and propose cooperation mechanisms and exchange of information to enable quick, efficient action to be taken to combat the concealment and covering up of property, rights and assets.

Since 2000, COAF has been a member of the Egmont Group (an informal mechanism set up in 1995) and the Financial Action Task Force (FATF), a body established under the auspices of the Organization for Cooperation and Development in Europe. The twelfth plenary meeting of FATF, held in Paris in June 2001, considered Brazil, on the basis of the evaluation process, to be fully in compliance with the 28 evaluation criteria derived from the Task Force's 40 recommendations.

At the regional level, Brazil has been a leader in establishing the South American Financial Action Group (GAFISUD), whose secretariat is located in Buenos Aires. Mexico, Portugal, Spain, the United States of America and the Inter-American Development Bank participate in this Group as observers. At the second plenary meeting of GAFISUD, held in Montevideo in June 2001, arrangements were made to set up a mutual evaluation programme to control money-laundering.

In the context of the Southern Common Market (MERCOSUR), a standing working group on terrorism has been established to coordinate measures at the subregional level to prevent, combat and eliminate terrorism.

3. Paragraph 1 (b)

> "Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;"
>
> *What are the offences and penalties in your country with respect to the activities listed in this subparagraph?*

Act 9613 of 3 March 1998 criminalizes the offences of money-laundering or concealment of property, rights and assets and provides for prevention of the use of the financial system for the illegal actions covered by the Act.

Article 1 lists the various offences that give rise to money-laundering. These offences include terrorism (art. 1, para. II).[1] The list of illegal acts is exhaustive, i.e., it may not be expanded, unless a new Act includes other types of offences that result in the practice of money-laundering. The crime of money-laundering is considered a separate offence from that which generated the funds. The penalty for the crime of money-laundering is from three to 10 years' imprisonment and a fine (in addition to the forfeiture of the funds).

Article 1, paragraph 1, provides that:

> "The same punishment applies to anyone who, in order to conceal or disguise the use of the property, rights and assets resulting from the crimes set forth in this article:
>
> I. Converts them into licit assets;

[1] Act 9613 of 3 March 1998.
Chapter I — Crimes of money-laundering or concealment of property, rights and assets
Art. 1 — To conceal or disguise the true nature, origin, location, disposition, movement or ownership of property, rights and assets that result directly or indirectly from the following crimes:
I. Illicit trafficking in narcotic substances or similar drugs;
II. **Terrorism**;
III. Smuggling or trafficking in weapons, munitions or materials used for their production;
IV. Extortion through kidnapping;
V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, for benefits as a condition or price for the performance or the omission of any administrative act;
VI. Acts against the national financial system;
VII. Acts committed by a criminal organization.

II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves or transfers any such property, rights and assets;

III. Imports or exports goods at prices that do not correspond to their true value."

Paragraph 2 of the same article provides that:

"The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of property rights and assets derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association or office set up for the principal or secondary purpose of committing crimes referred to in this Act."

4. Paragraph 1 (c)

"Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;"

What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Complementary Act 105 of 10 January 2001 authorizes the lifting of banking secrecy rules of financial institutions in order to allow for the investigation of crimes, including acts of terrorism. Thus, it is not a violation of confidentiality to "communicate to the competent authorities the practice of criminal or administrative offences, including the provision of information on operations using resources derived from any criminal activity" (art. 1, para. 3 (IV)).

Article 1, paragraph 4, of the Complementary Act provides that:

"4. Banking secrecy may be lifted where necessary in order to uncover any illegal transaction, in the investigation or trial stage, in particular in the case of the following crimes:

I. Terrorism;

II. Illicit trafficking in narcotic substances or similar drugs;

III. Smuggling or trafficking in weapons, munitions or material used for their production;

IV. Extortion through kidnapping;

V. Acts against the national financial system;

VI. Acts against the public administration;

VII. Acts against the tax system and social security;

VIII. Money-laundering or concealment of property, rights or assets;

IX. Acts committed by a criminal organization."

Article 9 of the Act provides that:

"Where, in the exercise of its functions, the Central Bank of Brazil and the Securities and Exchange Commission verify the occurrence of a crime defined by law as a publicly actionable offence, or verify indications that such offences are being committed, they must so inform the Public Prosecutor's Office, attaching to the report the necessary documents for the investigation or confirmation of the facts;

1. The report referred to in this article shall be submitted by the Presidents of the Central Bank and the Securities and Exchange Commission, or their competent representatives, within 15 days of receipt of the information, attaching a statement by the relevant legal departments;

2. Irrespective of the provisions of the chapeau of this article, the Central Bank and the Securities and Exchange Commission shall notify the competent public bodies of any irregularities and administrative offences, to the best of their knowledge, or of any indications of the Commission of such offences, attaching the relevant documents."

Under article 14 of Act 9613/98, financial institutions are required to report to COAF any suspicious transactions. COAF, in turn, is required to take steps to initiate the appropriate procedures when it concludes that crimes have been committed or that sufficient evidence exists that a crime has been committed.

Article 4 of Act 9613/98 provides that:

"During investigations or judicial proceedings, upon the request of the Public Prosecutor's Office, or the competent police authority, after consulting the prosecutor within 24 hours, and with sufficient evidence, the judge may order the seizure or attachment of property, rights or assets that constitute the object of the crimes referred to in this Act, and belong to the accused or are registered under his or her name, in accordance with the procedure set forth in articles 125 to 144 of Decree-Law 3689 of 3 October 1941 — Code of Criminal Procedure.

4. In the event that the immediate implementation of the preventive measures referred to herein may compromise the investigations, the judge — upon consultation with the prosecutor — may issue an order suspending an arrest warrant or the seizure or attachment of property, rights or assets."

Act 9613/98 also provides, in article 8, that at the request of a competent foreign authority the judge must order the seizure or attachment of property, rights or assets resulting from crimes committed abroad, whether or not there is an applicable international treaty, provided that the Government of the requesting State undertakes to grant reciprocity of treatment to Brazil.

5. Paragraph 1 (d)

"Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

What measures exist to prohibit the activities listed in this subparagraph?

Act 9613/98 criminalizes any act by which an individual or legal entity makes any funds, financial assets, economic or financial resources or other related financial services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts; or for the benefit of entities owned or controlled, directly or indirectly, by such persons; or for the benefit of persons and entities acting on behalf of or at the direction of such persons.

Article 1, paragraph 1, of that Act establishes that:

"The same punishment (as for anyone who disguises or conceals the nature, origin, location, disposition, movement or ownership of property, rights and assets that result directly or indirectly, from the crimes in question[2]) shall apply to anyone who, in order to conceal or disguise the use of the property, rights and assets resulting from the crimes set forth in this article:

I. Converts them into licit assets;

II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves or transfers them;

III. Imports or exports goods at prices that do not correspond to their true value.

2. The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of property, rights and assets derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association or office set up for the principal or secondary purpose of committing crimes referred to in this Act;"

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[2] I. Illicit trafficking in narcotic substances or similar drugs;
II. Terrorism;
III. Smuggling or trafficking in weapons, munitions or materials used for their production;
IV. Extortion through kidnapping;
V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
VI. Acts against the national financial system;
VII. Acts committed by a criminal organization.

Article 1, paragraph 4, establishes that:

"The sentence shall be increased by one third to two thirds in any of the instances set out in subsections (I) to (VI) of the chapeau of this article, when there is a pattern of crime or the crime is committed by a criminal organization."

Criminal responsibility for legal entities

The Constitution of the Republic establishes the criminal liability of legal entities and makes them subject to penalties compatible with their nature, for acts against the economic or financial order, the national economy or the environment (arts. 173, para. 5 and 225, para. 3).

Act 9613/98 establishes the administrative obligations of enterprises and other financial institutions operating in the marketplace, which are required to inform the Ministry of the Treasury Financial Activities Control Council (COAF) of any suspicious transactions.

"Article 9. The obligations set forth in articles 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

I. Receiving, acting as a broker and investing third parties' funds, in national or foreign currency;

II. Purchase and sale of foreign currency or gold as a financial asset;

III Acting as securities custodian, issuer, distributor, clearer, negotiator, broker or manager;

Single paragraph: The same obligations shall apply to the following:

I. Stock, commodities and futures exchanges;

II. Insurance companies, insurance brokers and institutions involved with private pension plans or social security;

III. Payment or credit card administrators and *consórcios* (consumer funds commonly held and managed for the acquisition of consumer goods);

IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow the transferral of funds;

V. Companies that engage in leasing and factoring;

VI. Companies that distribute any kind of property (including cash, real estate and goods) or the rendering of services, or give discounts for their acquisition by means of lotteries or other similar methods;

VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this article, which take place in Brazil, even if occasionally;

VIII. All other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial and insurance markets;

IX. Any and all national or foreign individuals or entities who operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents or who represent in any other way the interests of foreign legal entities that engage in any of the activities set forth in this section;

X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI. Individuals or legal entities that engage in the commerce of jewellery, precious stones and metals, objects of art and antiques.

Chapter VI
Customer identification and record-keeping

Article 10

The legal entities referred to in article 9 hereof shall:

I. Identify their customers and maintain an updated record in compliance with the provisions set forth by the competent authorities;

II. Keep an up-to-date record of all transactions, in national and foreign currency, involving securities, bonds, credit instruments, metals or any asset that may be converted into cash, and that exceeds an amount set forth by the competent authorities and in accordance with the requirements they may issue;

III. Comply with notices sent by the council established under article 14 hereof, within the time period stipulated by the competent judicial authority. The judicial proceedings pertaining to such matters shall be conducted in a confidential manner.

1. In the event that a customer is a legal entity, the identification mentioned in paragraph I of this article shall include the individuals who are legally authorized to represent it as well as its owners.

2. The reference files and records mentioned in paragraphs I and II of this article shall be kept during a minimum period of five years, counted from the date the account is closed or the date the transaction is concluded. The competent authorities may decide, at their own discretion, to extend this period of time.

3. The registration under paragraph II of this article shall also be made whenever an individual or legal entity or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limit set forth by the competent authorities."

Financing of terrorism (specific characterization of crime)

The International Convention for the Suppression of the Financing of Terrorism creates a new obligation not to provide funds to terrorist entities, including through legal means.

The suppression of the financing of terrorism thus has come to include not just the adoption of measures to prevent the concealment of the illicit origin of funds

obtained through crime, but also to prevent the use of measures aimed at concealing the origin of funds obtained legitimately but to be used for terrorist activities.

Brazil is committed to the suppression of this new form of crime, and has signed the International Convention for the Suppression of the Financing of Terrorism and approved the Decree on the implementation of United Nations Security Council resolution 1373 (2001). The provision of financial resources to terrorist entities can be dealt with under other types of crimes or criminal activities (criminal association, currency fraud, etc.).

6. Paragraph 2

"Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;"

What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Formation of a gang, armed group or criminal organization

Article 288 of the Penal Code deals with associations of more than three persons for the purpose of undertaking criminal activities. The recruitment of new members for terrorist groups would fall under the definition of that crime. Act 9034 of 3 May 1995, in article 2, paragraph V, allows for "infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies, and authorized by a reasoned judicial order delivered in secret". The Act also provides for the possibility of a reduced penalty in order to encourage voluntary cooperation on the part of a criminal leading to the dismantling of the organization.

Arms trafficking

With a view to controlling the importation and bearing of arms in Brazil, Act 9437 of 20 February 1997 was adopted, creating the National Weapons System (SNARM) and establishing the criteria for registering and bearing firearms.

Article 10

"It is forbidden to possess, keep, carry, manufacture, acquire, sell, rent, expose to view or provide, receive, hold on deposit, transport, transfer even free of charge, loan, remit, use, store or conceal a legal firearm without authorization and in violation of relevant legislation or regulations.

2. The penalty for violating the provisions of this article shall be two to four years' imprisonment and a fine, without prejudice to any penalty involving the crimes of smuggling or hijacking, if firearms or related materiel were used in a prohibited or restricted manner."

Other measures will be described below.

7. Paragraph 2 (b)

"Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;"

What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

National Public Security Plan

The National Public Security Plan, launched in June 2000, is a series of 15 commitments, which are taking the shape of 124 comprehensive activities, both high-priority and strategic. The Plan was conceived on the basis of the principles of interdisciplinarity, organizational and managerial pluralism, legality, decentralization, impartiality, transparency of actions, community participation, professionalism, attention to special regional features and strict respect for human rights. The commitments were assumed in the federal Government framework, and provided for intense cooperation with state and municipal governments, other authorities and civil society.

Commitment No. 1 — Control of drug trafficking and organized crime — provides for a series of 16 activities, including: operations to combat drug trafficking, smuggling and embezzlement; control of chemical precursors and narcotic substances; fighting of money-laundering; operational integration between federal and traffic police and between military and civilian police. Commitment No. 2 — Disarmament and weapons control — represents a real crusade to disarm society, which includes prohibiting the use and civilian trade of firearms and ammunition; controlling private security firms; creating a national comprehensive register of confiscated weapons; collection of illegal weapons; centralization of arms control; and a national disarmament campaign. In July 2001, the Government of the state of Rio de Janeiro ordered the simultaneous destruction of 100,000 weapons — a world record.

At the summit meeting of MERCOSUR, Bolivia and Chile, held in Florianopolis in December 2000, Brazil sponsored the establishment of a working group of MERCOSUR and associated States on firearms and munitions, whose first meeting, held in May 2001 in Asunción, furthered the discussion of topics such as the harmonization of laws on firearms and munitions, coordination of the topic in international forums, development of technologies for reducing accidents in the use of firearms and munitions and the link between illegal arms and munitions trafficking and drug trafficking. In September 2001, the Ministers of Justice and the Interior adopted a Declaration on Terrorism; this was followed by the creation of a standing working group on terrorism in October 2001, which will devote its work to cooperation in intelligence, studies and actions against terrorist activities. In addition, the MERCOSUR regional plan includes a chapter on terrorism, which provides for concrete counter-terrorism measures. Refresher courses on counter-terrorism will be offered; surveys will be conducted to identify persons or

organizations that support this criminal activity; mechanisms will be set up to prevent bioterrorism; and studies will be made of laws dealing with terrorism.

The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA), to which Brazil is a party, is another mainstay of Brazil's national and joint efforts.

Bilaterally, Brazil maintains useful understandings with its neighbouring and bordering countries, in particular with Paraguay, which has been identified as the main source of weapons entering Brazil. The implementation of an agreement signed in 1996 between Brazil and Paraguay on facilitating control of the firearms trade, resulted in a technical meeting on illicit weapons trafficking, signed in Asunción in November 2000. At this meeting, immediate, practical measures were decided with the aim of strengthening the enforcement of the control mechanisms provided for in the 1996 agreement, so as to help track down the origin of the weapons seized during police operations.

The 1996 agreement and the recommendations of the technical meeting have been followed up through regular bilateral meetings of the Joint Anti-Drug Commission, the last of which was held in Brasilia on 29 November 2001.

Also with regard to bilateral cooperation in combating illicit arms trafficking, a Brazilian/United States working group was set up in December 2000 to establish streamlined mechanisms for exchange of information to help trace weapons that have been seized.

The National Public Security Plan, in Commitment No. 5, also provides for the expansion of the witness and victim protection programme, supported by appropriations from the National Public Security Fund, and for international exchanges when the case involves international organized crime. In the federal police force, a service for the protection of persons (witnesses with criminal records) who cooperate with the authorities is being set up, with the help of special protection units.

Security agencies

The Ministry of Defence, through intelligence centres of armed forces commandos, in cooperation with the federal police force and in coordination with the Brazilian Intelligence Agency, has been conducting a survey and cross-referencing of data for checking the list issued by the United States of America of more than 340 persons suspected of participating in terrorist activities, together with a follow-up of information on the existence of "sleeper cells" and shelters for foreigners under suspicion of supporting terrorism, and on the use of forged documents, fund-raising for terrorist causes or triangulation of communications with extremist organizations, including the al-Qa'idah movement of Osama bin Laden. Up to now, no international terrorist cells have been found in the country or surrounding areas, nor have reports been received of any transfer of funds originating in Brazil to finance criminal activities.

Act 9883 of 7 December 1999 provides that the Brazilian Intelligence System (SISBIN), the main organ of the Brazilian Intelligence Agency (ABIN), will carry out counter-terrorism activities.

The Brazilian Military Staff is holding bilateral meetings with a number of Brazil's South American neighbours to discuss security in the subregion.

Implementation measures in specific areas (domestic)

(a) Nuclear materials

Brazil has always maintained a high level of protection for its nuclear facilities and materials. It fully applies the physical protection guidelines elaborated by the International Atomic Energy Agency (IAEA), as contained in document INFCIRC 225/Rev.4, on the transport, use and storage of nuclear materials and the security of facilities. Following the terrorist acts of 11 September, the National Nuclear Energy Commission (CNEN) took further administrative steps to reinforce security, putting in place stricter procedures for controlling staff access to the facilities and increasing the number of security guards. These measures are enforced by the facilities/operators in each case.

(b) Chemicals

Bearing in mind the obligations undertaken by Brazil under the Chemical Weapons Convention, an interministerial commission was formed to implement the Convention domestically (Decree 2074/96), under the coordination of the Ministry of Science and Technology. The commission's work has had satisfactory results. Legislation on administrative and criminal penalties for the production, development, stockpiling, transfer and use of chemical weapons is being considered in Parliament (Bill 2863/97). In line with the Convention, the new legislation will extend penalties to Brazilian nationals (physical or moral persons) who conspire to commit abroad any activities prohibited under the Convention. Act 9112/95 provides for controls, under the provisions of the Convention, of exports of chemical substances that may be used in the production of chemical weapons. In Brazil, domestic control over chemicals is governed by Regulation 105, enacted in the 1930s and periodically revised (currently Decree 3665 of 20 November 2000). The national army must license and monitor activities using controlled materials, including the chemical weapons precursors listed in the Convention. The federal police force is responsible for enforcing the relevant criminal law.

(c) Biological materials

The controls currently being exercised in Brazil by the competent authorities (Ministries of Health and Agriculture, for example) are based on the provisions of the Biological Weapons Convention, in force since 1975, which provides that each State party "shall ... take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery ... within the territory of such State, under its jurisdiction or under its control anywhere". Biological materials are regulated by Act 9112/95 (control of exports) and by Act 8974 of 5 January 1995, the latter of which provides guidelines for the use of genetic engineering techniques and for release into the atmosphere of genetically modified organisms; it also establishes the National Technical Commission on Biosafety. Although its purpose is to regulate genetically modified organisms, Act 8974 also applies to genetically modified pathogens that may be used in terrorist acts. More recently, on 16 October 2001, the Minister of Health signed Decree 1919/GM, which, in combination with

federal health regulations (Act 6437 of 20 August 1977) makes it obligatory to report the existence of samples of *Bacillus anthracis* in public and private laboratories. On the basis of these reports, the National Health Foundation will inspect the laboratories involved and recommend biosafety measures appropriate to each case.

Implementation measures in specific areas (international)

Brazil has participated in and supported talks in the competent forums on ways to strengthen, from the point of view of counter-terrorism, multilateral arrangements aimed at disarmament and non-proliferation of chemical, biological, nuclear and ballistic weapons (Organization for the Prohibition of Chemical Weapons (OPCW), Conference of the Biological Weapons Convention, IAEA and others).

At a meeting held in December 2001, the Executive Council of OPCW adopted a decision on the Organization's contribution to the global anti-terrorism effort, by which it stresses the objectives and provisions of the Convention that deserve priority implementation, namely, achieving universal adherence; enacting national implementating legislation for domestic control of dual-use substances; complete destruction of chemical stockpiles; international monitoring of the legitimate production of chemicals; and ensuring the ability of OPCW to respond to requests for assistance and protection against chemical weapons.

The Fifth Review Conference of the States Parties to the Biological Weapons Convention was held in Geneva from 19 November to 7 December 2001. The topic of national control of pathogens was given priority attention, and discussions on this topic will resume in 2002.

The forty-fifth session of the General Conference of IAEA, held in Vienna in September 2001, adopted resolution GC(45)/RES/14, on measures to improve the security of nuclear materials and other radioactive materials. Among other things, the resolution supports the Director General's efforts to set up an open-ended working group to consider expanding the scope of the Convention on the Physical Protection of Nuclear Material, in force since February 1987, to include the regulation of domestic transport, use and stockpiling of this type of material and prescribe safety measures for nuclear facilities. Currently, the Convention is limited to regulating the security of nuclear materials when they are being transported internationally. Brazil, which is implementing the measures stipulated in the Convention in respect of domestic transport and storage as well, supports the Director General's efforts and agrees with the proposals for strengthening the Convention under the terms being considered in Vienna. Talks on improving the Convention started in 1999, as a viable alternative to the impasse that had been reached in the negotiations of the Sixth Committee of the General Assembly on the drafting of an international convention for the suppression of acts of nuclear terrorism.

In the case of small arms and light weapons, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials has been ratified by only 12 countries. In view of the link between arms trafficking and other international crimes such as terrorism, fresh efforts should be made to ensure that all States members of OAS accede to the Inter-American Convention, which will complement any future measures to be taken under a convention against terrorism. It might be acceptable, at

the inter-American level, to build on the outcome of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York from 9 to 20 July 2001. The Programme of Action of the Conference, whose preamble recognizes the link between the topic and the problem of terrorism, sets forth a series of preventive and cooperation measures to be adopted by States with a view to combating unlawful trafficking in small arms and light weapons. An important paragraph was left out of the Programme of Action, however, prohibiting the sale of weapons to agents or entities who are not duly authorized by States to purchase them. Brazil continues to believe that this is an important factor in the effort to combat the illicit trafficking of firearms.

In the area of ballistic missiles, the countries members of the Missile Technology Control Regime have prepared a draft code of conduct against the proliferation of ballistic missiles, which will also be open to negotiation with non-members in the first half of 2002, with a view to its adoption by the greatest possible number of countries at a diplomatic conference tentatively planned for July or August 2002. Brazil supports the full participation of non-members of the Regime in the negotiation and adoption of the code of conduct by consensus.

8. Paragraph 2 (c)

"Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;"

What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

Extradition[3]

Extradition is the most important form of international cooperation in connection with the fight against crime. Under Brazil's legal system, extradition requires the intervention of the executive and judicial authorities (Act 6815/80, arts. 76 to 94).

Political offences

The granting of extradition for political offences is expressly prohibited by article 5, paragraph LII, of the Federal Constitution ("extradition of a foreigner for a political or ideological crime may not be granted"). The judicial authorities determine whether the offence having given rise to the extradition process is of a political nature. In this connection, Celso Mello affirms that political offences do not include offences against society or offences or attacks against the life of a head of State. If the country cannot extradite an accused (because he or she is a national,

[3] Brazil has extradition agreements in force with the following countries: Argentina, Australia, Belgium, Bolivia, Chile, Colombia, Ecuador, Italy, Lithuania, Mexico, Paraguay, Peru, Portugal, Spain, Switzerland, United Kingdom, United States of America, Uruguay and Venezuela. Agreements with Canada, France, Germany and the Republic of Korea have been submitted to the National Congress for consideration.

for example), it must prosecute him or her, as described below ("no safe haven principle").

Article 77 of Act 6815/80 provides that extradition may be granted if the act in question is primarily a violation of ordinary criminal law or if an ordinary offence related to a political offence is the principal act in respect of which extradition is requested. In addition, paragraph 3 provides that the Federal Supreme Court may consider that attacks on heads of State or any other authority, as well as acts of anarchy, terrorism, sabotage, kidnapping, war propaganda and violent subversion of order, are not political offences. Money laundering, as an intermediate criminal activity, likewise cannot be considered a political offence.

Extradition of nationals

The 1988 Federal Constitution provides that no Brazilian may be extradited, except for naturalized Brazilians in the case of an ordinary offence committed prior to naturalization or proven involvement in unlawful trafficking in narcotics and similar drugs. Neither the Constitution nor ordinary law mention any obligation to bring legal proceedings against a Brazilian or foreign national whose extradition has been denied by the Federal Supreme Court.

Nonetheless, some of the bilateral extradition agreements signed by Brazil provide that, since extradition cannot be granted in respect of Brazilian nationals, such persons shall be prosecuted under the Brazilian judicial system for the criminal conduct that gave rise to the request for extradition. Likewise, a multilateral instrument signed recently by Brazil (the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000) envisages this possibility by providing that, if a request for extradition is denied, the requesting State shall submit the case to the competent Brazilian authorities for the purpose of prosecution with due process of law, and shall provide the Brazilian judicial authorities with copies of the procedural and evidentiary documents necessary for the latter's investigation. This procedure is consistent with Brazil's domestic laws, which establish the competence of the national judicial system to prosecute Brazilian citizens for offences committed abroad. Thus, under no circumstances can an offence committed by a Brazilian national in another country go unpunished.

Absence of a bilateral treaty

In accordance with international practice, Brazil may, in the absence of a bilateral treaty, consider requests for extradition on the basis of a promise of reciprocal treatment in similar cases. The applicable domestic law consists of the Statute on Aliens (Act 6815/80) and some provisions of the Federal Constitution, which contain the safeguards, present in most international extradition instruments, that prohibit the granting of extradition if the death penalty may be imposed or if the request is based on a political or ideological offence.

With respect to the new generation of requests for judicial cooperation in criminal matters, bilateral and multilateral instruments on the subject establish conditions (minimum information requirements that must accompany the request) for the provision of the requested assistance.

While Brazil has no legislation that consolidates, in an organic way, the provision of and requests for international judicial cooperation in criminal matters,

national laws do cover the procedures relating to such requests and establish the formal prerequisites for granting them, including the commitment to reciprocity, respect for public order, transmittal through the diplomatic channel and translation of the document into the country's official language.

Other compulsory measures: deportation and expulsion

In exercise of its right to grant selective access to its territory, the Brazilian Government may avail itself of two procedures: deportation and expulsion.

Deportation is a form of exclusion from the national territory applicable to aliens who are in Brazil as a result of an irregular, and usually clandestine, entry (article 56 of Act 6815/80). If deportation is deemed to be in the national interest, it may be effected rapidly at the initiative of police authorities, without the need for direct involvement by the higher levels of government.

Article 22 of Act 6815/80 provides that entry into the national territory may be effected only at places where the competent organs of the Ministries of Health, Justice and Finance have established checkpoints.

In deportation, aliens are usually excluded from the national territory immediately if they do not leave voluntarily within the non-extendable grace period (article 98 of Decree 86715/81).

Generally speaking, the alien is given eight days' notice in cases related to irregular entry or stay, when fraud is involved. In cases of national interest, the second paragraph of article 57 allows deportation with or without prior notice; this authorizes the Minister of Justice to ask the judicial authorities to detain the deportee immediately for up to 60 days.[4]

In principle, the deportee may choose the country of destination.

Expulsion is imposed on the ground that an individual's presence in Brazilian territory is undesirable because it is prejudicial to national expediency and interests; thus, the Government has greater discretionary power in such cases. It is imposed on the basis of an investigation under the authority of the Ministry of Justice, in which the alien's right of defence is fully guaranteed. The law does not establish a specific time frame for the completion of the investigation for expulsion, except in the case of the summary investigation provided for in article 71 of the Statute on Aliens. It cannot, however, be prolonged indefinitely. An administrative provision of the Ministry of Justice — opinion 06/81 of the Office of the Legal Counsel — provides that the investigation must be completed within about 50 days from the date of detention of the person to be expelled. This period cannot be extended unless a reasoned justification is provided by the person responsible for the investigation. Lastly, the President of the Republic issues a decision, in the form of a decree, on whether the alien's presence in the national territory would be detrimental to the country's interests. The judicial authorities cannot dispute the merit of this decision.

In expulsion proceedings, the Minister of Justice may ask the judicial authorities to authorize the alien's detention for a period of 90 days, which may be extended for another 90 days. This measure may be taken immediately after extradition proceedings if the request for extradition is denied.

[4] Mirtô Fraga, *El Novo Estatuto del Estrangeiro Comentado* (Rio de Janeiro, Forense, 1985).

As in the previous case, practice and jurisprudence have admitted as a basic principle that expulsion should not degenerate into extradition; accordingly, an individual cannot be expelled to the country of his or her nationality if he or she is wanted there for a previous offence, nor can the individual be handed over to a third State in which he or she is wanted for an offence or from which the individual may be extradited to his or her own country.

9. Paragraph 2 (d)

"Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens";

What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

See the comments in relation to paragraph 2 (b).

10. Paragraph 2 (e)

"Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;"

What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Article 4, paragraph VIII, of the Constitution of the Republic establishes the "repudiation of terrorism" and imposes an obligation on the country to join efforts to combat terrorism. In article 5, paragraph XLIII,[5] the Constitution provides that "the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so".

[5] Constitution of the Republic, article 5: "All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right to life, liberty, equality, security and property, on the following terms: (...) XLIII, the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so;
XLIV, the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations".

In addition, article 5, paragraph XLIV, provides that "the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations".

These constitutional imperatives form the basis for the extensive complementary legislation on the subject. Worth noting, in particular, are Act 6815 of 18 August 1980 (provides that terrorism cannot be deemed a political offence); Act 7170 of 14 December 1983 (defines offences against national security and the political and social order; title II, "Offences and Penalties", establishes the penalty for "terrorist acts"); Act 8072 of 25 July 1990 (classifies terrorism as a heinous crime); and Act 9613 of 3 March 1998 (establishes as the offence of money-laundering any activity aimed at concealing or disguising the true nature, source, location, disposition, movement or ownership of property, rights or assets derived directly or indirectly from the crime of terrorism; offences against the national financial system; and offences committed by criminal organizations, among others).

Act 9613/98 does not expressly define the crime of terrorism, nor does Act 7170 of 14 December 1983, which characterizes offences against the political and social order and offences against national security. There is no precise and detailed legal description of the crime of terrorism in Brazilian legislation; there are only descriptions of conduct that constitutes a means of carrying out a terrorist act, as in the case of offences of collective endangerment (see, for example, article 373 of the Penal Code: "Attacking persons or property, for seditious, immoral or frivolous reasons, by means of serious threats, violence or harmful methods, for the purpose of spreading terror").

In specific cases, the judicial authorities are responsible for verifying the existence of an offence, in accordance with developments in the doctrine and case law and in application of the provisions of Act 8072 of 25 July 1990, which deals with heinous crimes and establishes stricter rules for the serving of sentences. Article 2 of that law provides that persons convicted of the crime of terrorism are not entitled to "I — amnesty, mercy or pardon; II — bail or interim release; paragraph 1 shall be carried out in its entirety under a closed prison regime".

11. Paragraph 2 (f)

> "Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;"
>
> *What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.*

International cooperation

Pursuant to article 8, paragraph 1, of Act 9613/98, the existence of a treaty or an international convention is not a prerequisite for international cooperation and the seizure or attachment of property, rights or assets derived from the offences that are described in article 1 and committed abroad. A promise of reciprocity is sufficient.

Brazil signed certain treaties which deal directly or indirectly with cooperation in the detection and prosecution of money-laundering offences and in forfeiture

actions. Most of those instruments are under consideration by the Brazilian Congress.

The exchange of information among the financial intelligence units is flexible and informal, in keeping with the Egmont Group's rules. The Brazilian unit, the Financial Activities Control Council (COAF), exchanges information with its counterparts based on the principle of reciprocity. Memoranda of understanding, based on the Egmont Group's model, are signed as required to regulate the exchange of information.

Pursuant to the aforesaid agreements and treaties, requests should preferably be made in writing, and should comply with the requirements prescribed by law. In case of emergency, other, alternative methods can be used, provided that the request is subsequently formalized within a period of 15 to 30 days.

Public and secret documentation can be provided on the basis of a treaty, an international agreement, or a promise of reciprocity. Nevertheless, more information cannot be provided to foreign authorities than to national authorities.

The information provided is generally secret. Such information can only be used for the purposes expressly mentioned in the request. Any other eventuality implies prior consultation with the requested country. Two exceptions are provided in agreements on cooperation in criminal matters that have not yet entered into force. These are the cases provided for in article 7, paragraphs 3 and 4, and article 11, respectively, of the agreements concluded with the United States and Uruguay. In both cases, it was established that the barrier to the use or provision of secret information would disappear whenever the constitutional obligation of a requesting State to provide such information in a judicial proceeding so requires. The information thus made public can thereafter be used for any purpose.

Significant barriers

The greatest barriers to international cooperation involve the breach of bank secrecy and interception of the flow of communications through computer and data transmission systems that are equivalent to telephone communications. In order for both types of communications to be used as valid evidence, they must be obtained legally.

In the first instance, see the comments on bank secrecy under article 1 (c). In the second instance, prior judicial authorization is needed.

Forfeiture and preventive measures

International cooperation in respect of forfeiture and preventive measures is governed by articles 125 to 144 of the Code of Criminal Procedure and by specific provisions contained in international treaties and agreements. In order for such measures to be carried out, dual incrimination is required; in other words, requests for search and seizure must be based on offences that are criminalized in both the requesting and the requested country. These are generally the most sensitive provisions of the agreements, since they deal specifically with the enforcement of precautionary measures and foreign judgements on the basis of letters rogatory. The importance of the matter resides in the fact that, as such measures may result in restrictions on fundamental rights and guarantees, as provided in article 5, sections

XLVI, LIV and LV, of the Brazilian Constitution, [6] the Federal Supreme Court's interpretation of the matter is fairly restrictive. It is therefore important to keep in mind some important clarifications if prompt compliance with requests is not to be thwarted.

The Federal Supreme Court has "invariably rejected the legal possibility of pronouncing exequatur for the purposes of carrying out, in Brazilian territory, proceedings of an executory nature"[7] by means of a passive letter rogatory, the sole exceptions being the cases provided for in the international convention on judicial cooperation, as will be seen below.

"In general, therefore, letters rogatory sent to Brazilian courts should have as their objective only the performance of simple acts of information or procedural communication [(service of process, notification or summons)], with such procedure lacking any connotations of an executory nature."[8]

Nevertheless, the Brazilian legal model relating to passive letters rogatory underwent an appreciable change as regards compliance with requests of an executory nature as a result of the Protocol on Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters, which Brazil signed on 27 June 1992 in the framework of the Southern Common Market (MERCOSUR).

"That international convention, called the Las Leñas Protocol, is formally incorporated into the Brazilian system of domestic positive law, since after being approved by the Congress (Legislative Decree 55/95), it was promulgated by the President of the Republic by means of Decree 2067, of 12 November 1996. With the Las Leñas Protocol, which is applicable only to interjurisdictional relations between States signatories to the Treaty of Asunción and members of MERCOSUR, it has become possible, by means of simple letters rogatory, to obtain the approval and enforcement in our country of judgements handed down by judicial bodies of Argentina, Paraguay and Uruguay."[9]

The objective of cooperation in criminal matters is to simplify the processing of precautionary measures and foreign judgements generated by any of the contracting parties, along the lines of what already exists in relation to the Las Leñas Protocol and the Protocol on Enforcement of Precautionary Measures — especially to enable them to be processed as though they were simple letters rogatory.

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[6] Brazilian Constitution, article 5: "XLVI. The law shall regulate the individualization of punishment and shall adopt, inter alia, the following: (a) deprivation or restriction of liberty; (b) loss of property; (c) fines; (d) alternative social service; and (e) suspension or prohibition of rights; ... LIV. No one may be deprived of his or her liberty or property without due process of law; LV. Litigants in court or administrative proceedings and defendants in general are assured of the use of the adversary system and of a full defence, with the means and remedies inherent therein; LVI. Evidence obtained through unlawful means is inadmissible in proceedings; LVII. No one may be considered guilty until the criminal sentence has become final and unappealable."

[7] (RTJ 52/299-RTJ 93/517-RTJ 95/518-RTJ 103/536-RTJ 110/55, v.g.), the sole exceptions being the cases provided for in the international convention on judicial cooperation (CR 7.618 (AgRg), Rel. Min. SEPULVEDA PERTENCE-CR 8.425, Rel. Min. CELSO DE MELLO).

[8] (RTJ 52/299-RTJ 87/402-RTJ 95/38-RTJ 95/518-RTJ 98/47-RTJ 103/536-RTJ 110/55).

[9] CR-7613, DJ 15/06/1999-p. 00001.

Nevertheless, in accordance with the Federal Supreme Court's restrictive interpretation, "a request for recognition and enforcement of judgements [and precautionary measures] by the jurisdictional authorities shall be processed by means of letters rogatory, through the central authority".

Article 18 of the MERCOSUR Protocol on Precautionary Measures states that: "A request for precautionary measures shall be formulated by means of letters requisitorial or letters rogatory, terms that shall be equivalent for the purposes of this Protocol".

It has been recommended that the formula used in article 19, paragraph 5, of the Protocol on Precautionary Measures, namely, "the approval procedure for foreign judgements shall not be applied in complying with precautionary measures", be included in the text of the agreement with the United Kingdom.

The aim is to avoid applying, in respect of agreements on cooperation in criminal matters, the formula established in the jurisprudence of the Federal Supreme Court, which has been repeatedly applied in connection with the processing of requests for enforcement of precautionary measures and judgements by means of letters rogatory; that would frustrate its objective, as can be inferred from the decision transcribed below:

> "In our law, the precautionary measure of attachment implies a judgement which orders it, since article 822 of the Brazilian Code of Civil Procedure states, in its preamble, that attachment can be ordered in the cases mentioned in that provision. It is obvious that, in the aforesaid rule, to order is the same as to pronounce. Accordingly, if Brazilian law does not permit attachment unless it is previously pronounced by means of a judgement, it can be concluded that the foreign judgement pronouncing such a measure cannot be enforced in Brazil unless it is approved by the President of the Federal Supreme Court (Constitution of 1967, Amendment 7 of 1977, art. 119, para. 3 (d); Code of Civil Procedure, art. 211; Rules of Procedure of the Federal Supreme Court, arts. 218 to 222).
>
> The letter rogatory is a means by which procedural judicial acts that do not depend on a judgement, such as summonses, service of process, assessments and the like, are complied with or enforced. Since the attachment of property is dependent upon a judgement which orders it, as required by our Code of Civil Procedure, article 822, preamble, it cannot be enforced in Brazil unless the foreign judgement pronouncing the measure is approved in our country. The reason for this is that a case may occur in which attachment is offensive to Brazilian public policy, national sovereignty or best practices in Brazil; such a case should be subject to monitoring by our courts (Act introducing the Brazilian Civil Code, art. 17; Rules of Procedure of the Federal Supreme Court, art. 219."[10]

Lastly, it should be noted that, while normal protocol has been simplified, the recognition of foreign judgements and requests for enforcement of precautionary measures generated by States parties (although carried out through letters rogatory) must observe and satisfy the formal requirements imposed by the aforesaid international agreement and not offend national sovereignty, public policy and

[10] Court of Letters Rogatory, Category CR-3237, reported by Minister Antônio Neder, adjudicated on 25 June 1980 and published in the Journal of Justice on 12 August 1980.

accepted practices. The President of the Federal Supreme Court, who is responsible, under article 102 (h) of the Constitution,[11] for approving foreign judgements and pronouncing "exequatur" on letters rogatory emanating from the judicial authorities of other countries, must verify compliance with the aforesaid requirements.

The conclusion of the Las Leñas Protocol and the cooperation agreement discussed earlier does not change the constitutional rule regarding competency, since acts of public international law, such as international treaties and conventions, are subject, in our legal system, to the supremacy and authority of the Brazilian Constitution.

In concrete terms, this means that requests from various Governments cannot be recognized directly by the magistrates responsible for the enforcement of the acts, unless the Federal Supreme Court is consulted as to their admissibility.

The innovation consists, therefore, in the fact that the aforesaid international conventions, by stipulating that the approval (i.e., the recognition) of a judgement generated by States parties must be carried out by means of a letter rogatory, allow the competent judicial authority of the forum of origin to take the initiative, thus enabling exequatur to be deferred, regardless of whether the requested party is served with a summons, without prejudice to its subsequent pronouncement.[12]

Nevertheless, an important question is raised by the fact that the vast majority of cooperation requests are based on promises of reciprocity, and not on treaties as such. In such cases there is no established jurisprudence with regard to the performance of the acts provided for in the money-laundering law, based on article 8, paragraph 2. It can therefore be assumed that, in such cases, the Federal Supreme Court can require the procedures mentioned above.

Division of forfeited property

With regard to the division of forfeited property with other Governments that have contributed to the success of the forfeiture action, the general rule, provided in articles 118 and 120 of the Code of Criminal Procedure, states that forfeited property shall revert to the nation, either by sale at public auction or by transfer to the national treasury, without prejudice to the rights of injured parties or bona fide third parties. In this case, the State can recover the assets in the proportion due to it.

Nevertheless, several treaties to which Brazil is a signatory contain a provision that authorizes the division of funds among several jurisdictions, on the basis of a number of criteria. This notwithstanding, article 8, paragraph 2, of Act 9613/98 is innovative and authorizes the division of the proceeds of the crime of money-laundering, even where there is no international treaty dealing expressly with the matter.

As indicated in the paragraph, "in the absence of a treaty or convention, the property, rights or assets forfeited or attached at the request of competent foreign authorities, or funds from the sale thereof, shall be divided in half between the

[11] "Article 102. The Federal Supreme Court is responsible primarily for safeguarding the Constitution, it being incumbent upon the Court to: I. Hear and adjudicate, originally:... (h) approval of foreign judgements and pronouncement of exequatur on letters rogatory, which may be referred by its rules of procedure to its president."

[12] Letter Rogatory No. 7,618 — Argentine Republic (AgRg), Rel. Min. SEPULVEDA PERTENCE).

requesting State and the Government of Brazil, without prejudice to the rights of injured parties or bona fide third parties".

Conversely, the barriers arising from taxation and conditions on the use of the property by whoever receives it are, in turn, a direct result of the principle of sovereignty and are undoubtedly subject to verification on a case-by-case basis.

Act 7560, of 19 December 1986, established the National Anti-Narcotics Fund and institutionalized a policy of using forfeited property and property acquired through the sale of proceeds of illicit drug trafficking and related activities. Article 5 of that Act sets out the procedure for the use of such funds.

12. Paragraph 2 (g)

"Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;"

How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

Pursuant to article 22 of Act 6815/80, "entry into the national territory shall be permitted only at sites where control is exercised by the competent organs of the Ministry of Health, the Ministry of Justice and the Ministry of the Treasury". The Brazilian police and military authorities are responsible for controlling our borders. Illegal entry into Brazil may result in the following offences:

- **Counterfeiting a public document** (article 297: "counterfeiting a public document in whole or in part, or altering an authentic public document; penalty: two to six years");
- **Ideological forgery** (article 299 of the Penal Code; penalty: one to five years);
- **Use of a forged document** (article 304 of the Penal Code);
- **Fraud in violation of the Aliens Act** (article 309 of the Penal Code: "an alien uses a name that is not his or her own in order to enter or remain in the national territory"; penalty: one to three years);

In addition to the relevant federal legislation, the following agreements on border controls and transit of persons were adopted in the framework of MERCOSUR:

- Agreement on the implementation of integrated border controls among the MERCOSUR countries (CMC/JUL/1/1993);
- Agreement on cooperation and reciprocal assistance among the border administrations of the MERCOSUR countries for the control of customs trafficking (CMC/DEC/1/1997);
- "General security plan for the three-way border between Brazil, Argentina and Paraguay" (26 May 1998);

- "General cooperation and reciprocal coordination plan for regional security (sixth meeting of ministers of the interior)" (CMC/DEC/22/1999);
- General cooperation and reciprocal coordination plan for regional security within MERCOSUR, the Republic of Bolivia and the Republic of Chile (CMC/DEC/23/1999).

13. Paragraph 3

"Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;"

What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

The Ministry of Justice has created the National Programme for the Integration of Criminal Intelligence, which allows for the immediate sharing of criminal intelligence among security agencies throughout the country and speeds up police investigation of organized crime. This system is now being implemented in the MERCOSUR countries, facilitating the exchange of information on criminals and their operating methods.

14. Paragraph 3 (b)

"Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

See commentary on paragraph 1 (a) and paragraph 2 (f).

15. Paragraph 3 (c)

"Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;"

What steps have been taken to cooperate in the areas indicated in this subparagraph?

In recent years, the Government of Brazil has expanded and improved the legislative framework for international judicial cooperation by negotiating and signing bilateral agreements and by participating more actively in multilateral efforts in that regard under the auspices of the United Nations and the Organization

of American States and with its MERCOSUR partners plus Bolivia and Chile. In assigning a high priority to legal assistance in criminal matters, the country is part of a worldwide trend towards a stronger commitment by government agencies in this area.

The assistance provided includes, among other things:

(1) Taking evidence or statements;

(2) Issuing documents;

(3) Examining property;

(4) Locating and identifying persons (natural or juridical) or assets;

(5) Effecting service of documents;

(6) Transferring persons in custody to testify;

(7) Executing requests for search and seizure;

(8) Executing procedures related to the freezing and confiscation of assets, restitution of assets and collection of fines.

At the bilateral level, Brazil has negotiated or signed cooperation agreements on criminal matters with some 25 countries, acquiring important partners in cooperation in the combating of transnational crime. At the regional level, in 1998 Brazil signed extradition agreements with MERCOSUR member countries and associate members Chile and Bolivia to allow for swift repatriation of fugitives from justice, under clear rules to facilitate criminal prosecution and allow for execution of a request for detention prior to extradition via Interpol.

At the multilateral level, Brazil resumed its consideration of accession to the OAS instrument on the topic and was represented at the ministerial level at the conference in December 2000 at which the United Nations Convention against Transnational Organized Crime was adopted.

International cooperation under these instruments allows for facilitated and expedited handling of requests from the competent authorities, with certain advantages over the traditional institution of letters rogatory, in view of the need to obtain information or evidence or have provisional measures applied to freeze property and assets during investigative and judicial proceedings conducted to elucidate and punish crimes characterized by a high degree of complexity and the involvement of transnational networks, as is the case with money-laundering, terrorism and drug trafficking.

Important legal instruments

Brazil has incorporated Security Council resolutions 1267 (1999), 1333 (2000) and 1373 (2001) in its law by Decrees 3267/99, 3755/01 and 3976/01, respectively.

Among the relevant international instruments signed by Brazil, the following deserve mention:

(1) United Nations Convention against Transnational Organized Crime, signed on 15 December 2000 (Palermo Convention). The text has been sent to the National Congress.

(2) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, signed on 15 December 2000. The text has been sent to the National Congress.

(3) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed on 15 December 2000. The text has been sent to the National Congress.

(4) Agreement on Cooperation in Combating Organized Crime, signed on 11 July 2001. The text is under consideration by the National Congress.

(5) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, signed on 11 July 2001. The text is under consideration by the National Congress.

Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), ratified by the Government of Brazil.

Inter-American Convention on Mutual Assistance in Criminal Matters (1992); the text is under consideration by the Executive Branch.

Bilateral agreements

Brazil has signed bilateral agreements with a number of countries on combating transnational organized crime. The agreements basically concern topics related to exchange of information and assistance in criminal investigations, execution of provisional judicial measures involving search and seizure of property connected with the crime (instruments or proceeds of crime) and enforcement of criminal judgements.

Among the provisions of these bilateral instruments, the following deal specifically with terrorism:

(a) Exchange of information on the activities of terrorist groups, their organizational structure, members, financing and operating methods;

(b) Exchange of information on anti-terrorist methods and techniques;

(c) Exchange of scientific and technological experience relating to the protection and security of sea, air, road and railway transport, for the purpose of modernizing security and protection measures at ports, airports, railway stations and bus stops and other buildings and facilities vulnerable to terrorist attacks.

Leaving aside agreements on the transfer and extradition of prisoners, Brazil has concluded the following bilateral agreements on judicial cooperation and mutual assistance in criminal matters:

Agreement guaranteeing reciprocity in the transmission of information from the criminal register between the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany. Entered into force on 15 May 1957. The agreement does not deal with money-laundering, but it

does lay the basis for bilateral cooperation by establishing a reciprocity commitment.

Treaty on mutual legal assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of Canada. The agreement, signed on 21 January 1995, is under consideration by the National Congress. It does not expressly mention the possibility of sharing the proceeds of crime. However, article 9 provides that "the requested State shall take such measures as are permitted by its legislation to freeze, seize and confiscate such proceeds".

Article 1.1 provides that mutual assistance shall be afforded "in the widest possible measure" and shall include, among other things, "search and seizure (d); provision of objects, including items of evidence (e); transmission of documents (g); and execution of measures to locate, freeze and confiscate the proceeds of crime. It thus serves the objectives involved in combating money-laundering (article 1.4 expressly mentions cooperation in the matter of international transfers of capital or payments)".

Agreement on judicial cooperation and mutual assistance in penal matters between the Government of the Federative Republic of Brazil and the Government of the Republic of Colombia. Entered into force on 29 June 2001. Article 2 (f) and the following subparagraphs provide for the execution of provisional measures on property and definitive transfer (confiscation) of property, and allow for other forms of assistance. The agreement promotes cooperation in combating money-laundering.

Agreement on judicial assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of the United States of America. Entered into force on 21 February 2001. This is a comprehensive agreement designed to cover all aspects of bilateral relations involving assistance in the areas of justice and criminal law. It focuses on combating serious criminal activities such as money-laundering and the illicit traffic in firearms, munitions and explosives. It makes it possible to execute orders for search and seizure and, where appropriate, for confiscation of property.

Agreement on judicial cooperation in criminal matters between the Government of the Federative Republic of Brazil and the Government of the French Republic. Entered into force on 1 February 2000. This agreement does not have as systematic a structure as the others, but it also provides for the execution of search and seizure orders and other investigative acts. This is the only agreement which requires orders to be accompanied by a sworn translation into Portuguese.

Agreement on association and cooperation in matters of public security between the Government of the Federative Republic of Brazil and the Government of the French Republic, of 12 March 1997; awaiting adoption in plenary session by Congress.

Treaty on judicial cooperation in criminal matters between the Federative Republic of Brazil and the Italian Republic. Entered into force on 1 August 1993. This agreement is very limited in scope, as it deals only with cooperation in criminal matters involving proceedings conducted by the judicial authorities; it does not provide for cooperation in investigative matters. However, since it does provide for the search and seizure of property, it may be updated. The convention was

concluded at a time of lesser awareness of the problem of the globalization of international crime.

Agreement on judicial assistance in criminal matters between the Federative Republic of Brazil and the Government of the Republic of Peru. Entered into force on 23 August 2001. This is the most modern and efficient agreement that Brazil has concluded in response to the need to combat transnational organized crime. Article 17 establishes that in each specific case, the parties shall agree on the division of property and proceeds according to the nature and scope of the cooperation provided.

Treaty on reciprocal assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of the Portuguese Republic. Entered into force on 7 May 1991. Article 11, paragraph 4, states that "proceeds confiscated ... shall be retained by the requested Party unless both Parties decide otherwise in a particular case".

Treaty on reciprocal judicial assistance in criminal matters between the Government of the Federative Republic of Brazil and the Eastern Republic of Uruguay. This treaty establishes that, to the extent permitted by law and in the manner deemed appropriate, either party may transfer confiscated property to the other party.

The Government of Brazil, duly authorized by Congress, is ready to ensure the entry into force of the signed agreement.

Agreement on judicial assistance between Brazil and Japan. Entered into force on 1 November 1940.

Convention concerning free legal aid between Brazil and Belgium. Entered into force on 14 July 1957.

Memorandums of understanding between the Financial Activities Control Council (COAF) and the financial analysis units of Belgium, Bolivia, Colombia, France, Panama, Paraguay, Portugal and Russia concerning cooperation in the exchange of financial information for the purpose of combating money-laundering. All of these are in force.

Multilateral agreements

Inter-American Convention on Mutual Assistance in Criminal Matters. Signed by Brazil on 7 January 1994. In force internationally since 14 April 1996. Promotes cooperation in investigations or court proceedings. Article 7 establishes its scope and application.

Optional protocol on tax crimes related to the Inter-American Convention on Mutual Assistance in Criminal Matters. Article 1 provides that the States parties to the Protocol may not exercise the right to refuse a request for assistance on the ground that the request concerns a tax crime where the offence is committed by way of an intentionally false statement for the purpose of concealing income derived from any other offence covered by the Convention.

Inter-American Convention against Corruption (Caracas Convention). Signed by Brazil on 29 March 1996. In force internationally since 6 March 1997.

The instrument is being considered by Congress. Articles XIV, XV and XVI make it possible to apply the Convention directly in combating money-laundering.

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Organisation for Economic Cooperation and Development (OECD)). Ratified on 24 August 2000. In force internationally since 15 February 2000. Article 7 deals specifically with the crime of money-laundering.

Protocol on mutual legal assistance in criminal matters within the framework of the Southern Common Market (MERCOSUR) (Brazil, Argentina, Paraguay and the Eastern Republic of Uruguay). Adopted by Decision 2/96 of the Council of MERCOSUR. In force since 8 January 2000. Deals broadly with the requirements for combating offences linked to international crime.

Extradition agreement between the States members of MERCOSUR. Adopted by Decision 14/98 of the Council of MERCOSUR. Signed by Brazil on 10 December 1998. Under consideration by Congress. Articles 22, paragraph 6, and 24 call for the handing over of detainees and of the proceeds of crimes in order to combat money-laundering.

Extradition agreement between the States members of MERCOSUR, the Republic of Bolivia and the Republic of Chile. Signed by Brazil on 10 December 1998. Under consideration by Congress. Reproduces the provisions of the extradition agreement between States members of MERCOSUR.

In addition to the promises of reciprocity made through bilateral memorandums of understanding or other types of international agreements (including the exchange of notes verbales), there have been many attempts to promote cooperation in combating money-laundering at the international level. However, the initiatives mentioned below promote cooperation in combating money-laundering only in an indirect manner. Most of them are agreements on combating the crimes that precede "laundering".

Narcotic drugs

Convention for the Suppression of the Illicit Traffic in Dangerous Drugs and the 1936 Protocol thereto. Signed by Brazil on 26 June 1936. In force internationally since 9 July 1933. Article 35 may serve as a basis for action to combat the illicit traffic in narcotic drugs.

Single Convention on Narcotic Drugs, 1961. Ratified by Brazil on 18 June 1964. In force since 18 December 1964. Updated the 1946 agreements, conventions and protocols on narcotic drugs. May be used as a basis for combating the illicit traffic in narcotic drugs.

Convention on Psychotropic Substances, 1971. Ratified on 14 February 1973. In force since 16 August 1976. Articles 20, 21 and 22 (2) (ii) provide a legal basis for the implementation of stricter control measures and for combating the illicit traffic in psychotropic substances.

Protocol amending the Single Convention on Narcotic Drugs of 1961. Ratified by Brazil on 12 September 2001.

South American Agreement on Narcotic Drugs and Psychotropic Substances (1973). Ratified on 29 January 1974. In force since 26 March 1977.

Brazil has existing bilateral agreements on combating the illicit traffic in narcotic drugs with the following countries: Argentina, Bolivia, Chile, Colombia, Cuba, Guyana, Italy, Mexico, Paraguay, Peru, Portugal, Romania, Russia, South Africa, Suriname, United Kingdom, United States of America, Uruguay and Venezuela. Agreements with Bolivia, Peru and Spain on this matter are under consideration by Congress. A similar agreement with Ecuador has been adopted and is awaiting adoption by the Ecuadorian Congress.

16. Paragraph 3 (d)

"Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;"

What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Brazil has reiterated its total rejection of terrorism in all its forms and its understanding of the fact that efforts to combat international terrorism should include all measures compatible with the Charter of the United Nations and other norms of international law. In this regard, the Brazilian Government is taking the necessary internal measures towards Brazil's accession to all international treaties on combating terrorism.

Annex 1 includes a table of Brazil's status with regard to multilateral instruments relating to terrorism within the framework of the United Nations and the Organization of American States.

17. Paragraph 3 (e)

"Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);"

Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

See comments under paragraph 3 (d).

18. Paragraph 3 (f)

"Take appropriate measures in conformity with relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;"

What legislation, procedures and mechanisms are in place for ensuring asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Article 3, paragraph III, of Act 9474/97 provides that:

"Refugee status shall not be granted to individuals who:

III. Have committed a crime against peace, a war crime, a crime against humanity or a particularly heinous crime, or have participated in terrorist acts or drug trafficking;

IV. Are considered guilty of acts contrary to the purposes and principles of the United Nations."

19. Paragraph 3 (g)

"Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;"

What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Article 1 of Act 9474 of 22 July 1997 ("to define mechanisms for the application of the 1951 Status of Refugees, and to create other provisions") provides that:

"Refugee status shall be granted to any individual who:

I. Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country;

II. Having no nationality and being outside the country where he previously had his usual residence, is unable or unwilling to return to that country for the reasons listed in the previous subparagraph;

III. Owing to serious and widespread human rights violations, has to leave his country of nationality to seek refuge in another country."

Article 3, however, particularly paragraph III, provides for exceptions:

"Article 3. Refugee status shall not be granted to persons who:

I. Are already receiving protection or assistance from United Nations agencies or bodies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR);

II. Are resident in Brazilian territory and have rights and obligations related to Brazilian nationality;

III. Have committed a crime against peace, a war crime, a crime against humanity or a particularly heinous crime or have participated in terrorist acts or drug trafficking;

IV. Are considered guilty of acts contrary to the purposes and principles of the United Nations."

Even if the applicant for refugee status meets the requirements set forth in article 1 of Act 9474/97, he or she shall not be granted that status if his or her situation corresponds to any of the cases listed in the various paragraphs of article 3.

Requests for refugee status are submitted to the Committee only after the Federal Police have been consulted as to the applicant's background. Article 39, paragraph II, of the Act provides as follows:

"Article 39. Refugee status shall be lost under the following conditions:

I. Voluntary renunciation;

II. Proof of the false nature of the reasons invoked in order to obtain refugee status or the existence of facts which, had they been known when refugee status was granted, would have led to its refusal;

III. Activities contrary to national security or public order;

IV. Departure from Brazilian territory without prior authorization from the Brazilian Government.

Single paragraph: Those who lose refugee status under paragraph I or IV of this article shall come under the general provisions for foreigners resident in Brazil. Those losing it under paragraph II or III shall be subject to the compulsory measures provided for in Act 6815 of 19 August 1980."

Thus, refugee status may be lost at any time if the person's situation matches any of the criteria listed in that article. For example, if the refugee conceals his participation in activities corresponding to the exclusion clauses, such as terrorist acts, he will lose his refugee status as soon as that fact is known to the authorities.

Objective and frequently updated analysis of the situation prevailing in the applicant's country of origin, information given by the subject during his interview with the experts of the Committee, and information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) through the Ministry of Foreign Affairs and the Federal Police make it possible to verify whether the subject has committed acts contrary to the humanitarian spirit of the Act.

Thus, Brazil's legislation relating to refugees, although generous, provides mechanisms to prevent the granting of refugee status to those who have committed acts of terrorism, in accordance with the principles governing the Geneva Convention relating to the Status of Refugees of 1951, which is embodied in domestic legislation.

Anexo

Actos Internacionales sobre Terrorismo (Naciones Unidas y OEA)

No.	*Organización*	*Convenciones y Protocolos*	*Estados-Parte (septiembre 2001)*	*Situación del Brasil*
1	ONU	Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves (Tokio, 14/9/1963)	172[13]	Ratificación: 14/4/1970 Promulgación: Decreto No. 66520, de 30/04/1970
2	ONU	Convenio para la represión del apoderamiento ilícito de aeronaves (La Haya, 16/12/1970)	174	Ratificación: 14/2/1972 Promulgación: Decreto No. 70201, de 24/02/1972
3	ONU	Convenio para la represión de actos ilícitos contra la seguridad de la aviación civil (Montreal, 23/09/1971)	175	Ratificación: 26/1/1973 Promulgación: Decreto No. 72383, de 20/06/1973
4	OEA	Convención para Prevenir y Sancionar los Actos de Terrorismo Configurados en Delitos Contra las Personas y la Extorsión Conexa Cuando Éstos Tengan Trascendencia Internacional (Washington, 2/2/1971)	13[14]	Ratificación: 5/2/1999 Promulgación: Decreto No. 3018, de 6/04/1999
5	ONU	Convención sobre la prevención y el castigo de los delitos contra personas internacionalmente protegidas, incluso los agentes diplomáticos (Nueva York, 14/12/1973)	109	Adhesión: 7/6/1999 Promulgación: Decreto No. 3167, de 14/9/99
6	ONU	Convención sobre la Protección Física de los Materiales Nucleares (Viena, 3/3/1979)	69	Ratificación: 8/2/1987 Promulgación: Decreto No. 95, de 16/04/1991
7	ONU	Convención Internacional contra la toma de rehenes (Nueva York, 18/12/1979)	98	Ratificación: 7/4/2000, con reserva al artículo 16 (2) Promulgación: Decreto No. 3517, de 20/06/2000
8	ONU	Protocolo para la represión de actos ilícitos de violencia en los aeropuertos que presten servicio a la aviación civil internacional (Montreal, 24/2/1988)	107	Ratificación: 8/6/1997 Promulgación: Decreto No. 2611, de 2/6/1998
9	ONU	Convenio para la represión de actos ilícitos contra la seguridad de la navegación marítima (Roma, 10/3/1988 – Conferencia Internacional bajo los auspicios de la IMO)	56	Firmado por Brasil en 10/3/1988. En proceso de envío al Congreso Nacional
10	ONU	Protocolo para la represión de actos ilícitos contra la seguridad de las plataformas fijas emplazadas en la plataforma continental (Roma, 10/3/1988 – Conferencia Internacional bajo los auspicios de la IMO)	51	Firmado por Brasil en 10/3/1988. En proceso de envío al Congreso Nacional
11	ONU	Convenio sobre la marcación de explosivos plásticos para los fines de detección (Montreal, 1/3/1991)	69	Instrumento de ratificación depositado en 4/10/2001. Promulgación: Decreto No. 4021, de 19/11/2001

No	*Organización*	*Convenciones y Protocolos*	*Estados-Parte (septiembre 2001)*	*Situación del Brasil*
12	ONU	Convenio internacional para la represión de los atentados terroristas cometidos con bombas (Nueva York, 15/12/1997)	45	Firmado en 12/3/1999. En tramitación en el Congreso Nacional
13	OEA	Convención Interamericana Contra la Fabricación y el Tráfico Ilícitos de Armas de Fuego, Municiones, Explosivos y otros Materiales Relacionados (Washington, 14/11/1997)	14	Ratificación: 28/10/1999 Promulgación: Decreto No. 3229, de 29/10/1999
14	ONU	Convenio internacional para la represión de la financiación del terrorismo (Nueva York, 9/12/1999).	15 (para la entrada en vigencia, son necesarios al menos 22 Estados-Parte)	Firmado en 10/11/2001 En proceso de envío al Congreso Nacional

[11] Son 189 los Estados Miembros de las Naciones Unidas.

[14] Son 34 los Estados miembros de la Organización de los Estados Americanos.

United Nations S/2001/1286

Security Council

Distr.: General
27 December 2001
English
Original: French

Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Mauritius, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-72355 (E) 110102 070202

Annex

[Original: English]

Letter dated 26 December 2001 from the Permanent Representative of Mauritius to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instruction from my Government, I have the honour of enclosing the report from the Republic of Mauritius to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

My Government stands ready to provide the Committee with further information as necessary or if requested to do so by the Committee.

(*Signed*) B. **Gokool**
for Jagdish **Koonjul**
Ambassador
Permanent Representative

Enclosure

Report of the Republic of Mauritius on the actions taken by the Government to implement Security Council resolution 1373 (2001)*

Pursuant to Paragraph (6) of Resolution 1373, all Member States are required to submit a report within 90 days of its adoption on the steps they have taken to implement this Resolution.

This is the first such report submitted by Mauritius which lists actions taken or envisaged to be taken in order to fully implement Resolution 1373 (2001). The attention of the Committee is drawn to the fact that Mauritius is currently in the process of drafting the following legislation with a view to combat international terrorism:

(i) The Anti-Terrorism Bill
(ii) The Financial Intelligence Unit Bill
(iii) The Criminal and Related Matters (Mutual Assistance Bill)

The report also highlights the needs identified by Mauritius in respective areas where technical assistance would be required.

Mauritius has always been supportive of all international initiatives designed to combat international terrorism. After the terrorist attacks in the United States of America on 11 September Mauritius pledged along with other members of the United Nations, its full commitment to work together with the international community to eradicate forever terrorism in all its forms and manifestations and to make this world a safer place for future generations. By unreservedly condemning the acts of terror against the USA and by extending its unqualified support to Resolutions 1368 and 1373 adopted on 12 and 28 September 2001 respectively, Mauritius is resolved to fight the scourge of international terrorism.

In order to fulfill its obligations under the existing international and regional instruments in compliance with the provisions of Security Council Resolution 1373 the Government of Mauritius has taken a series of measures aimed at preventing and suppressing terrorist acts, including the financing and preparation of any acts of terrorism.

Preparatory work for implementation of the Security Council Resolution 1373

Immediately after the adoption of Resolution 1373 Mauritius set up a Committee of Senior Officials from relevant Ministries and Department under the Chairmanship of the Ministry of Foreign Affairs and Regional Cooperation with the specific mandate to look into the full and effective implementation of Security Council Resolution 1373 and the relevant international and regional instruments designed to combat international terrorism.

The Committee has devised a plan of action with a view to expediting the adherence to international treaties and eventually to incorporate and implement their provisions at national level.

On 30 October 2001 the Government of Mauritius designated the Ministry of Foreign Affairs and Regional Cooperation as the National Focal Point for information on assistance in connection with matters arising under resolution (1373) and informed the Secretariat of the CTC accordingly.

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* The annexes to this report are on file with the Secretariat and are available for consultation.

The Government of Mauritius has taken the following measures with a view to complying with the specific provisions of Security Council Resolution 1373.

Operative Paragraph 1

Sub-Paragraph (a)
Prevention and suppression of the financing of terrorist acts

As far as administrative and other regulatory bodies are concerned, the Central bank of Mauritius took the following measures to control transactions of terrorist-related entities.

The Central Bank drew the attention of all banking and deposit taking institutions, money changers and foreign exchange dealers to the provisions of the Resolution 1373 (2001). It requested them to ensure that their institutions and commercial entities are kept free from any abuse that may be made of them by the perpetrators of terrorist acts. The entities and commercial units have been instructed to report, on the basis of confidentiality, any information which would help to trace those involved in international terrorism or in financing and assisting such acts and take appropriate measures against them accordingly.

The banking and deposit taking institutions, money changers and foreign exchange dealers have been provided with, as a first step, a list of institutions/persons suspected of terrorist activities as prepared by the US Government. The list, which is at **Annex I** was issued by the United States of America, is an inexhaustive list subject to necessary modifications.

These institutions have a duty to report to the Central Bank any accounts or transactions those organizations entertain with them. They have also been instructed to seek the approval of the Central Bank before executing any further request for transactions in respect of the companies/entities/individuals on the list.

Mauritius has always followed the principles of transparency and sound banking practices. In this respect and in view of consolidating on the credibility already gained as a viable financial center, Mauritius has passed the Economic Crime and Anti-Money Laundering Act, which aims primarily at criminalising money laundering and other related financial transactions. The Act establishes *inter alia* the Economic Crime Office which is entrusted with the duty to investigate any matter relating to suspicious transactions. **(Copy of the Act is attached at Annex II)**

Sub-Paragraph (b)
Criminalise the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used in order to carry out terrorist acts;

Part III of the Act specifically addresses the concerns raised in OP I of Resolution 1373. S.17 of the Act reads as follows:

Money Laundering Offence

(1) Any person who –

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents the proceeds of any crime; or

(b) receives, processes, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime, where he suspects or has reasonable grounds for suspecting that the

property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

(2) Any bank, financial institution, cash dealer or member of a relevant profession who –

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents the proceeds of any crime or

(b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents the proceeds of any crime,

and who fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of any act of money laundering shall commit an offence.

(3) Notwithstanding section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit any act specified in subsections (1) and (2), shall commit an offence.

(4) For the purposes of subsections (1), (2) and (3), references to a crime shall be deemed to include references to any act or omission which occurred outside Mauritius which, had it taken place in Mauritius, would have constituted a money laundering offence or any other crime.

(5) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

(6) Any person may, upon a single information or upon a separate information, be charged with and convicted of both the offence of money laundering and of the offence which generated the proceeds alleged to heave been laundered.

(7) In any proceedings against a person for an offence under this section, it shall be sufficient to aver in the information that the property is, in whole or in part directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were in whole or in part directly or indirectly the proceeds of a crime.

Money laundering and other associated offences are crimes punishable by a fine not exceeding 2 million rupees ($70,000) and by penal servitude.

Sub-Paragraph (c)
Freezing of assets

Notwithstanding the fundamental right to protection from deprivation of property as contained in S (8) of the Constitution of Mauritius, the national legislation provides for the temporary deprivation of property by way of attachment, freezing of accounts and assets at banks and financial institutions for commission of serious offences punishable by law.

In respect of the above, Part V, Section 25 of the Economic Crime and Anti-Money Laundering Act provides as follows:

(1) Where a person is charged or is about to be charged in any Court with a money laundering offence or any economic offence, the Supreme Court may, on an application by the Director of Public Prosecutions, make an order, subject to such conditions as to the duration of the order or otherwise as the Court deems fit –

(a) attaching in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and

(b) prohibiting the accused or any person acting on his behalf or any person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.

(2) The Supreme Court may, in respect of an order under subsection (1), specify moneys or salaries, wages, pensions or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstance of payment or receipt.

(3) In making an order under subsection (1), the Supreme Court may authorize –

(a) the payment of debts incurred in good faith due to creditors of the accused, before the request for the order was made by the Director of Public Prosecutions;

(b) the sale, transfer or disposal of any property by the accused where the Supreme Court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.

(4) The Supreme Court may appoint the Official Receiver of the Supreme Court or any suitable person to manage the assets of the accused under the supervision of the Supreme Court.

(5) An order under this section shall take effect forthwith and the Director of Public Prosecutions shall –

(a) cause notice of the order to be published in the next issue of the Gazette and in at least 2 daily newspapers published and circulated in Mauritius; and

(b) give notice of the order to –

(i) all notaries;
(ii) banks, financial institutions and cash dealers; and
(iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.

(6) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force –

(a) until the Director of Public Prosecutions decides not to proceed with a charge or intended charge under subsection (i);

(b) until the final determination of the charge under subsection (1); or

(c) in the event of a conviction, until an order for forfeiture is made by the Court under section 18(2) or any proceedings relating thereto are concluded.

(7) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the *Gazette* and at least 2 daily newspapers published and circulated in Mauritius.

(8) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be void.

(9) In this section "accused" means a person who is charged or is about to be charged with money laundering or any economic offence.

Sub-Paragraph (d)

Short of a comprehensive enactment for the prevention of Terrorism, the existing National legislation makes provision for the prohibition of activities listed in the above sub paragraph. These are as follows:

Preventive Measures

Economic Crime and Anti-Money Laundering Act
Part IV Section 20
Limitation of payment in cash

(1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act **(Relevant Extracts at Annex III)** but subject to subsection (2), no person shall make or accept any payment in cash in excess of 350,000 rupees (# US$ 12,000) or an equivalent amount in foreign currency or such other amount as may be prescribed.

(2) Subsection (1) shall not apply to an exempt transaction.

Part IV Section 21
Obligations of banks, financial institutions, cash dealers and members of relevant professions

(1) Every bank financial institution, cash dealer or member of a relevant profession shall take such measures as are reasonably necessary to ensure that neither it nor any service offered by it is capable of being used by a person to commit or facilitate the commission of a money laundering offence.

(2) Without limiting the generality of subsection (1), every bank, financial institution or cash dealer shall –

(a) verify, in such manner as may be prescribed, the true identity of all customers and persons with whom they conduct transactions;

(b) keep such records, registers and documents as may be required under this Act or any regulations made under this Act;

(c) upon a Court order, make available such records, registers and documents as may be required, and

(d) forthwith report every suspicious transaction.

(3) Every member of a relevant profession shall forthwith report every suspicious transaction.

(4) Nothing in subsection (3) shall be construed as requiring a law practitioner to report any transaction of which he has acquired knowledge in privileged circumstances unless it has been communicated to him with a view to the furtherance of a criminal or a fraudulent purpose.

(5) Where it appears to the Bank of Mauritius that any bank or cash dealer, subject to its supervision, has failed to comply with any requirement imposed by this Act and any regulations made under this Act on the bank or cash dealer and that such failure is caused by a negligent act or omission or by a serious defect in the implementation of any requirement under the Act or the regulations, the Bank of Mauritius may, in the absence of any reasonable excuse –

(a) in the case of a bank, proceed against it under section 7 or 8 of the Banking Act 1988 **(Annex IV)** on the ground that it is carrying on business in a manner which is contrary to the interests of the public;

(b) in the case of a person carrying on deposit-taking business, cancel its authorization under section 13A of the Banking Act 1988; or

(c) in the case of a cash dealer, inform the Minister to whom responsibility for the subject of finance is assigned that it has reason to believe that the cash dealer is carrying on business under the Foreign Exchange Dealers Act 1995 **(Annex V)** in a manner which is not conducive to the orderly operation or development of the foreign exchange market in Mauritius.

(6) Where it appears to the Bank of Mauritius that any financial institution has refrained from complying or negligently failed to comply with any requirement of this Act or any regulations made under this Act, it shall refer the matter to the regulatory body which may take action against the financial institution under any enactment empowering it so to do.

(7) Where it appears or where it is represented to any disciplinary body that any member of a relevant profession over which it exercises control, has refrained from complying or negligently failed to comply with any requirement of this Act or any regulations made under this Act, the disciplinary body may, under any enactment empowering it so to do, take action against the member for professional misconduct.

Part IV Section 22
Lodging of reports of suspicious transactions

Please Note that Director hereunder refers to the Director of the Economic Crime Office

(1) Every report under section 21(2)(d) or (3) of Act shall be lodged –

(a) in the case of a bank, financial institution or cash dealer, with the Bank of Mauritius;

(b) in the case of a member of a relevant profession, with the Director.

(2) For the purposes of this section, every report shall include –

(a) the identification of a party or parties to the transaction;

(b) the amount of the transaction, the description of the nature of the transaction and all the circumstances giving rise to the suspicion;

(c) the business relationship of the suspect to the bank, financial institution, cash dealer or member of relevant profession, as the case may be;

(d) where the suspect is an insider, any information as to whether the suspect is still affiliated with the bank, financial institution, cash dealer or member of the relevant profession, as the case may be;

(e) any voluntary statement as to origin or source of the proceeds;

(f) the impact of the suspicious activity on the financial soundness of the reporting institution or person; and

(g) the names of all the officers, employees or agents dealing with the transaction.

Part IV Section 23
Consideration of reports of suspicious transactions

Notwithstanding sections 39 and 39A of the Banking Act 1988 or any other enactment, where the Bank of Mauritius receives a report under this Part, it shall consider the report and where the report and any information available gives rise to a reasonable suspicion that a person may have committed, is committing or is about to commit an offence which the Director has power to investigate, it shall refer the report to the Director together with any such information as may appear to it to be necessary to assist an investigation into money-laundering or any economic offence.

Other Measures:

The Ministry of Economic Development, Financial Services and Corporate Affairs has already initiated action as regards the preparation of the Financial Intelligence Unit Bill. Such a Unit will allow for rapid exchange of information and thus assist the Government to combat inter-alia money laundering and address concerns of financing of terrorism.

The Financial Services Commission (FSC) has gone through its data base to search for any links with any name published in the Executive Order and by international media, professional firms, web-sites (FBI, State Department, UK's Financial Services Authority, Bank of England and the UN etc.).

The FSC has urged professional associations in the financial services industry to conduct appropriate checks on their files and records and is relaying to them the latest information and conduct of on-going checks. The FSC has not found any trace of terrorist related money in Mauritius. However, investigation is being carried out on other names provided for in the Executive Order 32224 and in the list provided for by the Sanctions Committee on Afghanistan on implementation of Resolutions 1267 and 1333.

Copies of UNSC Resolutions have also been circulated to all stock broking companies and the Stock Exchange of Mauritius and the Central Depository System for appropriate action and have been requested to inform of steps taken to implement the Resolutions. In accordance with the Central Depository and Settlement Company Rules and Procedures, all Stock Broking Companies have to ascertain a client's identity when opening a Securities Account.

Operating Paragraph 2 (a)

As mentioned above, the Government of the Republic of Mauritius will be introducing the Anti-Terrorism Bill in the National Assembly shortly. This new Act will make provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith.

However current legislation that indirectly deal with offences related to terrorism are:

(i) The Criminal Code **(Annex VI)**
(ii) The Criminal Code (Supplementary) **(Annex VII)** and
(iii) The Firearms Act **(Annex VIII)**

Operative paragraph (2), (b), (c), (d), (e), (f)

The Anti-terrorism Bill will be re-inforced by the proposed Criminal and Related Matters (Mutual Assistance) Bill which is currently subject of debate at the National Assembly. The Bill will provide for the widest range of international cooperation to be given and received by Mauritius promptly and to the fullest extent possible, in investigations, prosecutions and other proceedings concerning serious offences.

At the regional level, Mauritius is giving due consideration to the signature and ratification of the OAU Convention on the Prevention and Combating of Terrorism adopted by the OAU Heads of State and Government in Algiers in 1999. Mauritius is also Member of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) and has signed in August 2001 the SARPCCO Agreement on Cooperation and Mutual Assistance **(Annex IX)** in the field of Crime Combating. The Agreement provides for sharing regional information and intelligence on organized crime and the endorsement of a Regional Organised Counter-Crime Intelligence Sharing System.

Assistance to Foreign States is also provided for in the Economic Crime and Anti-Money Laundering Act (Part VI).

Equally important, Mauritius has in August 2001 signed the SADC Protocol on Politics, Defence and Security Cooperation **(Annex X)** and the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials in the SADC Region **(Annex XI)**. The main objective of this Protocol is to provide mechanisms which will assist Member-States to promote peace and security in the region and guide SADC Member States in their collaboration on matters of peace and security and to prevent, combat and eradicate illicit manufacturing of arms, ammunition and other related materials and promote and facilitate cooperation and exchange of information and experience in the region and cooperate at regional and international levels on matters of small arms and other related materials respectively.

The Extradition Act **(Annex XII)** and the Deportation Act **(Annex XIII)** in Mauritius offers the opportunity for offenders to be extradited. Moreover the Police Department is also linked to Interpol and information related to terrorists are circulated between Interpol Member States. Our Membership of the Commonwealth provides for greater international cooperation, strengthening of national, regional and international legal frameworks to combat terrorism and an important role can be played by Member-States through the Commonwealth Schemes for mutual assistance to counter crime and terrorism.

Given its geographical specificity, Mauritius does not have border controls. However, immigration controls are performed at two points of entry and exit, namely: SSR International Airport, and Port Louis Harbor.

Moreover, the National Coast Guard carry out surveillance patrols at their different posts around the island. Various sea passes are also under control.

The Immigration services have tightened control at the entry and exit at the airport and seaport by profiling passengers on entry and monitoring their movements. All the travel and other documents are scrutinized and all passengers are examined thoroughly to prevent movement of terrorists.

The address and identity of applicants for Passports, Certificates of Identity and travel Documents are verified by the Police of the Locality where the applicants reside before their issuance and visible and invisible security features are incorporated inside the pages of the passport to prevent forgery, tampering etc.

Operative Paragraph 3, (a) (b) and (c)

Relevant Ministries and Departments have been requested to identify the type of technical assistance needed for thorough implementation of Resolution 1373 and the International and Regional conventions given the wide ranging strategies would be imperative to combat international terrorism in all its forms and manifestations.

(1) The Customs Department has informed that it lacks the necessary expertise and equipment to detect weapons, small arms, technical parts, radioactive materials and biological weapons. In this context, the Customs Department has requested for technical assistance viz Training by Experts of its Officers in the detection of the above-mentioned materials and handling of the detection Equipment. The Customs department has also expressed need for scanners and related equipment that can detect not only arms and dangerous drugs but also radioactive and bio-terrorism materials. There is a current project to equip the department with a vehicle mounted with scanning equipment but it is still at a tender stage.

(2) The State Law Office has also informed of need for technical assistance in the formulation of appropriate legislations over and above existing laws that deal indirectly with offences related to terrorism.

(3) Whilst Member-States are reporting on current and expected implementation of the UNSC resolutions related to Terrorism, it is of view that renowned institutions such as the Centre for International Crime Prevention could be involved in the training of National Focal Points and relevant Ministries/departments from Member-States for the fight against terrorism.

Operative Paragraph 3 (d)

As stated above, a Committee of Senior Officials has been set up to monitor implementation of UNSC Resolutions and will *inter alia* look into the implementation of Conventions (International and Regional) relating to the combating and Prevention of International Terrorism. On the 11th of November 2001 the Rt. Hon. Prime Minister of the Republic of Mauritius signed the International Convention for the Prevention and Suppression of Financing of Terrorism in New York on the margins of the 56th UNGA. (Status of Signing/Ratification and Accession to International Conventions related to Terrorism is at **Annex XIV.**

Annexes

I. United States Government list of persons/institutions suspected of terrorist activities

II. Economic Crime and Anti-Money-Laundering Act

III. Bank of Mauritius Act (relevant extracts)

IV. Banking Act, 1988

V. Foreign Exchange Dealers Act, 1995

VI. Criminal Code

VII. Criminal Code (Supplementary)

VIII. Firearms Act

IX. SARPCCO Agreement on Cooperation and Mutual Assistance

X. SADC Protocol on Politics, Defence and Security Cooperation

XI. SADC Protocol on the Control of Firearms, Ammunitions and Other Related Materials in the SADC Region

XII. Extradition Act

XIII. Deportation Act

XIV. Status of signing/ratification and accession to international conventions related to terrorism